United States Court of Appeals
for the Second Circuit

APPENDIX

77-4046

United States Court of Appeals

FOR THE SECOND CIRCUIT

THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA AND THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA,

Petitioners,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND TO SET ASIDE AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

VOLUME I

Pages 1a - 523a

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UNITED STATES COURT OF APPEALS
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Monroeville, Pennsylvania

Case No.: 6-CA-8591

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9.18.75	Amended Charge filed
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11.26.75	Complaint and Notice of Hearing, dated
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12.16.75	Regional Director's Order Rescheduling Hearing, dated
12.30.75	Petitioner's 1/ Answer, dated
2. 3.76	Petitioner's Request for Postponement of hearing, dated
2. 5.76	Regional Director's Order Rescheduling Hearing and Notice of Change of Place of Hearing, dated
2.23.76	General Counsel's letter to Petitioner of intent to amend Complaint, dated
3. 3.76	Hearing Opened
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9.22.76	Administrative Law Judge's Decision issued
10.22.76	Petitioner's Exceptions to the Administrative Law Judge's Decision, received
1.17.77	Decision and Order of the National Labor Relations Board, dated

---

1/ Petitioner herein was Respondent before the Board.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTH REGION

In the matter of: THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA AND THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA and RETAIL STORE EMPLOYEES UNION, LOCAL 1407 as chartered by RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO	Case Number 6-CA-8591

National Labor Relations Board
Hearing Room #2
Porter Building
601 Grant Street
Pittsburgh, Pennsylvania, 15219
March 3, 1976

Met pursuant to notice at 10:00 o'clock a.m.

BEFORE:

HONORABLE JOSEPH I. NACHMAN, ADMINISTRATIVE LAW JUDGE.

APPEARANCES:

MARVIN DICKER, Esq., Proskauer, Rose, Goetz, and Mendelsohn, 300 Park Avenue, New York, New York, 10022, appearing on behalf of the Respondent.

DANIEL W. COOPER, Retail Store Employees Union, Local 1407, 1708 Law & Finance Building, Pittsburgh, Pennsylvania, 15219, appearing on behalf of the Charging Party.

E. DONALD LADOV, Esq., and AMY S. KRIEGER, Esq. 601 Grant Street, 10th Floor, Porter Building, Pittsburgh, Pennsylvania, 15219, appearing on behalf of the General Counsel.

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PROCEEDINGS

10:00 a.m.

JUDGE NACHMAN: On the record.

The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Florsheim Shoe Store Company, Case Number 6-CA-8591.

Assigned to conduct this hearing is Senior Administrative Law Judge, Joseph I. Nachman. The spelling is N-A-C-H-M-A-N.

I will ask Counsel for the parties to state their appearances for the record. General Counsel first.

MR. LADOV: For General Counsel, E. Donald Ladov, 601 Grant Street, 10th Floor, Porter Building, Pittsburgh, Pennsylvania.

MISS KRIEGER: Co-Counsel for General Counsel is Amy S. Krieger, 601 Grant Street, Porter Building, Pittsburgh, Pennsylvania.

JUDGE NACHMAN: For the Respondent?

MR. DICKER: Proskauer, Rose, Goetz, and Mendelsohn represented by Marvin Dicker, 300 Park Avenue, New York, New York, 10022.

JUDGE NACHMAN: Any Co-Counsel?

MR. DICKER: No Co-Counsel.

JUDGE NACHMAN: For the Charging Party?

MR. COOPER: Daniel W. Cooper, 1708 Law & Finance

Building, Pittsburgh, Pennsylvania, 15219.

JUDGE NACHMAN: All right, Mr. Ladov, would you introduce your formal papers, please?

MR. LADOV: Your Honor, I'd like, at this time, to introduce what has been marked as General Counsel's Exhibit Number 1(a) through 1(t), 1(t) being an index and description of the formal documents.

MR. DICKER: No objection.

JUDGE NACHMAN: All right. We will receive General Counsel's Exhibit No. 1, and all it's parts will be received.

(The documents above-referred to were marked as General Counsel's Exhibits Nos. 1(a) through 1(t) for identification and received in evidence.)

MR. LADOV: Your Honor, if I may, I'd like to offer the following stipulations, at this time.

JUDGE NACHMAN: Let me get things in order, first.

MR. LADOV: O.K.

JUDGE NACHMAN: Are there any motions with respect to the pleadings from the General Counsel, first?

MR. LADOV: Yes, Your Honor.

At this time, Your Honor, I'd like to move to strike Respondent's Affirmative Defense, number one.

The basis of this motion, Your Honor, is that this affirmative defense is irrelevant as a matter of law and that any allegation contained in the complaint will be proven solely based on the testimony presented at the Hearing.

JUDGE NACHMAN: I'd just like to ask the Respondent, what is the purpose of a defense like this? Assuming that the evidence should show what you plead here in your defense, wouldn't that go to the--

MR. DICKER: I think that if the evidence and the investigation, Your Honor, is so tainted so as to prevent a fair, reasonable hearing here that the complaint would have to be dismissed.

JUDGE NACHMAN: That's true, whether you plead it or not.

MR. DICKER: That's true, if we plead it or not, Your Honor.

JUDGE NACHMAN: What's the purpose of the pleading?

MR. DICKER: Well, the purpose of the pleading is to,--that's not the usual kind of a defense that an Employer raises in an unfair labor practice proceeding. Indeed, my understanding is, it's an unusual kind of defense.

The purpose of pleading, here, is to let the Board know and the Administrative Law Judge know, and the Board, itself, know, that we intend to plead and allege that affirmatively, and we intend to demonstrate the unfairness and coercion which has tainted this investigation.

JUDGE NACHMAN: Well, I don't think whether it's pleaded or unpleaded, it has any bearing at all.

So, I'm just going to let the answer stand as it is. The case will be decided on the basis of the evidence as it develops.

MR. LADOV: Second, your Honor, I move to strike Respondent's second affirmative defense regarding the Freedom of Information Act request .

My grounds regarding this motion, Your Honor, is that Respondent has made the appropriate request to the Regional Director, which was denied and the appeal to the General Counsel, which was denied; and, last week, filed papers in the United States District Court for the Western District of Pennsylvania in order to enjoin this hearing, and that was also denied by District Judge Baron McCuen. I have a copy of that order. That such defense is irrelevant, again, to any of the material issues raised by the complaint. And, I move so to strike it.

JUDGE NACHMAN: It just occurs to me, the Freedom of Information Statute, whatever it's application may be, gives the Respondent access to, in proper cases, to certain information.

If one entitled to such information is denied access to it, it seems to me that goes to the validity of the whole administrative proceeding that's litigated in this proceeding subject to review, if and when the case ever gets to a review stage, and whatever may be the outcome will be the outcome;

but, again, it's determined by the evidence. It's not a question of pleading. So, I'll have to make the same ruling with respect to the second defense. I think the presence of the pleading simply has no relevance.

Any other motions from the General Counsel in regard to pleadings? I noticed in the formal papers there's a notice of intention to amend.

MR. LADOV: Yes, sir.

At this time, Your Honor, I would like to move to amend paragraph 6(a) of the complaint to further include, if I may read the 6(a),--6(a) is "interrogating its employees concerning their union activities, membership and sympathies, or the union activities, membership and sympathies of their fellow employees ",--and I would like to amend the complaint to further include, under paragraph (a) by J. R. Holleran, in or about early August, 1975, and in or about early September, 1975, and on or about February 25th, 1976, at Respondent's Northway Center Mall Retail Store.

JUDGE NACHMAN: In other words, the complaint, as you propose to amend it will read as you just indicated.

MR. LADOV: I have some more, Your Honor, if I may.

JUDGE NACHMAN: Well, I mean with respect to that particular amendment.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: All right. Any others?

MR. LADOV: Again, under paragraph 6(a), by Theodore Silverhorn on or about September 9th, 1975, at Respondent's South Hills Village Shopping Center Retail Store, and by H. B. Levine on or about February 27th, at Respondent's Northway Center Mall Retail Store.

That is all the amendments under paragraph 6(a).

JUDGE NACHMAN: February 27th, I assume, of 1976?

MR. LADOV: 1976, Your Honor.

I have one other amendment.

JUDGE NACHMAN: O.K. State them all.

MR. LADOV: Under paragraph 6(b), which is "threatening employees with discharge, layoff or other reprisals if the employees selected the Union as their collective bargaining representative", and I'd like to amend to further include, by J. R. Holleran, in or about early September, 1975, at Respondent's Northway Center Mall Retail Store.

JUDGE NACHMEN: Any objections?

MR. DICKER: Your Honor, we strenuously object to the amendment of the complaint.

JUDGE NACHMAN: You don't have to give it any adjective definition.

MR. DICKER: Well, I gave it an adjective--

JUDGE NACHMAN: It's just as effective whether it's strenuous or not.

MR. DICKER: That's true, Your Honor, except that I'm a little bit disturbed, to say the least, concerning amendments of the complaint in matters which occurred in August and September of 1975. I'll address those first.

There were three charges filed in this matter, the original one back on September 8th, 1975, subsequent amended charges on October 29th, 1975, and then on November 18th, 1975.

The matter has been under investigation, then, since September of 1975, and the complaint was issued herein, I believe, on November 26th, 1975.

From November 26th, 1975, until shortly before February 23rd, 1976, when we received a letter dated February 23, 1976, from Mr. Ladov, which is in evidence in the formal documents,--I believe it's 1(r),--we were engaged in an effort to obtain certain information from the National Labor Relations Board, Region 6.

Now, I'll get into that with respect to a motion I want to make at the conclusion.

We were also,--it seemed to me that our inability to discover the evidence which I will talk about in a few minutes added to the burden that we had to prepare any kind of defense in this case.

Now, we come in a week before the hearing, or ten days before the hearing, and we're told that there's going to be an amendment to the complaint concerning events which occurred, not recently, so that the Board did not have knowledge, thereof, but events which occurred back at the very initiation of the alleged unfair labor practice.

To come in now and have me to start worrying and preparing about these things, I think is highly prejudicial. This is not the way one would conduct any kind of a hearing, administrative or in a court of law.

The Defendant, Respondent, whatever you want to call the Employer in this case, should have ample opportunity to prepare and present appropriate defenses.

In a court of law, these kind of amendments would automatically mean a postponement of the hearing for an adequate period of time to allow the Respondent, himself, to investigate and learn what has happened.

If the amendment,--if you grant the Board the right to make this amendment, we would add that as one of the reasons we are going to ask for a postponement of this hearing.

JUDGE NACHMAN: Let me ask you, are Mr. Holleran, Mr. Levine, and Mr. Silverhorn available to you?

MR. DICKER: Yes, Your Honor; but, we're talking about events now which occurred some seven months ago. It makes it somewhat difficult for us to talk to a man and say, did you, on or about September 9, or did you sometime in early September or early August, have a conversation with some unknown individual in or around the store where you--and then use those conclusionary words, which except for lawyers and people who are practitioners in this field, have no meaning.

JUDGE NACHMAN: Well, wouldn't you have had the same difficulty if you had such a conversation on the 25th of November?

MR. DICKER: No, if we knew on the 25th of November, [illegible]ould think the witnesses would have less difficulty in recalling who they may have seen about that time, and what they may have spoken about,about that time.

One of the reasons, I understand the 6-month statute of limitations is contained in the Act is that the drafters of the National Labor Relations Act recognized and realized that long periods of time only go to help fade witnesses' recollections.

The problem is, to a certain degree, solved in the courts where there is pre-trial discovery allowed and you can memorialize, through a stenographer, someone's recollection.

Here, we're talking about amending the complaint on the eve of trial for events which happened some five months ago, six months ago,--

JUDGE NACHMAN: Well, you've had notice of it almost three weeks, now.

MR. DICKER: The letter which we received some--

JUDGE NACHMAN: Yes, but you were given notice of it in an oral telephone conversation on February 19th. That's what the letter says.

MR. DICKER: Yes, Your Honor, that there was going to be an amendment to the complaint. I'm not sure whether I recall whether or not the details of the amendment were given to us on February 19th, or not.

JUDGE NACHMAN: Well, that motion will be denied without prejudice to your right to renew it at the end of the General Counsel's case. If you can convince me, at that time, that there is a reasonable basis for saying that you have been, in any way, impeded in presenting your defense, I will give it consideration; and, maybe, at that time, allow you a continuance, to prepare for those allegations.

MR. LADOV: Your Honor, may I ask one point of clarification. Is it Mr. Dicker's motion that was denied, not my motion to amend the complaint?

JUDGE NACHMAN: No, his motion is denied. Your motion to amend the complaint is granted. The complaint is so amended.

MR. DICKER: As I understand the procedures, it's not necessary for me to take exceptions to each rule?

JUDGE NACHMAN: You have an automatic exception to all adverse rulings.

MR. DICKER: Thank you.

JUDGE NACHMAN: Are there any other motions with respect to the pleadings from the General Counsel?

MR. LADOV: I have some stipulations regarding some of the pleadings.

JUDGE NACHMAN: With respect to the pleadings.

MR. LADOV: Regarding the pleadings.

JUDGE NACHMAN: Well, stipulations are a different thing.

MR. LADOV: No more motions, Your Honor.

JUDGE NACHMAN: All right.

Are there any motions from the Respondent with respect to the pleadings?

MR. DICKER: With respect, specifically, to the pleadings? No, Your Honor. We have another motion, but not with respect to the pleadings.

JUDGE NACHMAN: All right. Now, are there any stipulations which you gentlemen have reached?

MR. LADOV: At this time, I'd like to propose a stipulation to the facts contained in paragraph 1 of the complaint, "A true and correct".

MR. NACHMAN: As I understand, the Respondent amends it's answer to admit the allegations in paragraph 1. Is that correct?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: All right, the answer is so amended.

MR. LADOV: I propose a stipulation regarding paragraph 4 of the complaint, "The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

JUDGE NACHMAN: I take it, again, the Respondent withdraws the allegation of it's original answer, and amends it's answer to admit the allegation of paragraph 4?

MR. DICKER: Yes, Your Honor.

MR. LADOV: Regarding paragraph 5 of the complaint, under the name, Louis G. Brien, Vice President and General Manager of the Florsheim Shoe Shops, we stipulate that that is correct.

MR. DICKER: Your Honor, Mr. Brien is a vice-president and general manager, but it's not technically The Florsheim Shoe Shops. I think for purposes of this proceeding, we will stipulate that Mr. Brian is a supervisor within the meaning of the Act, and we will further stipulate that he is the general manager, and has overall responsibility.

JUDGE NACHMAN: Of the stores involved in this proceeding?

MR. DICKER: Of the stores involved in this proceeding. I don't want to get into the technical, corporate, and subsidiary set-up, because I don't think it's relevant to this proceeding.

JUDGE NACHMAN: I take it that will satisfy your purposes, Mr. Ladov?

MR. LADOV: Yes, your Honor.

JUDGE NACHMAN: All right. The answer will be amended, then, to indicate the admission just made.

MR. LADOV: I stipulate regarding paragraph 9 of the complaint, "The following employees of Respondent constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act."

JUDGE NACHMAN: You don't have to read the whole paragraph. Are you stipulating to admitting the allegations of paragraph 9? Is that the effect of the amendment?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: All right, again, the answer is amended to admit the allegations of paragraph 9.

Am I correct?

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: All right. The answer is so amended.

Is there any other stipulation you could reach?

MR. LADOV: Yes, Your Honor, just one minute, and I'll have these put into evidence.

At this time, I'd like to have this marked as General Counsel's Exhibit No. 2. This is an employee payroll list as of August 28th, 1975.

(The document, above-referred to was marked as General Counsel's Exhibit No. 2, for identification.)

MR. LADOV: That is a total complement of the employees employed as of that date in the five stores in issue.

JUDGE NACHMAN: Now, do the parties stipulate as to the correctness of this document?

MR. DICKER: Yes, Your Honor, we do.

JUDGE NACHMAN: All right. I take it you stipulate this document into evidence?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: All right. General Counsel's Exhibit No. 2 will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 2, was received in evidence.)

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 3. This is a list of employees employed at the five stores in the Pittsburgh Area as of September 18th, 1975.

(The document, above-referred to was marked as General Counsel's Exhibit No. 3, for identification.)

JUDGE NACHMAN: It's a list of--what's the difference between 2 and 3?

MR. DICKER: Different dates, Your Honor. Different dates.

JUDGE NACHMAN: Oh, I see.

MR. LADOV: One is the 28th of August; the other is the 17th of September.

JUDGE NACHMAN: Well, it's the same information with respect to different dates?

MR. LADOV: Yes, sir.

JUDGE NACHMAN: The correctness of this is stipulated?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: The document is stipulated into evidence?

MR. DICKER: Yes.

JUDGE NACHMAN: It will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 3, was received in evidence.)

MR. LADOV: I have just one more point, Your Honor, not regarding a stipulation. I have not shown this to Mr. Dicker.

During the testimony, much of the testimony revolves around dates and a specific time frame, and I was wondering whether the court would have any objection if we had this calendar available for all witnesses, since there are no calendars in the court room?

MR. DICKER: Yes, that will be fine.

JUDGE NACHMAN: I have a calendar.

MR. DICKER: '75.

JUDGE NACHMAN: It's '75.

Now, let me ask, for my clarification, why is it material to have two employee lists? I take it that you are contending that the Union was a duly designated collective bargaining representative?

MR. LADOV: As of August 28th, 1975.

JUDGE NACHMAN: As of August 28th, and what relevance has September 18th?

MR. LADOV: Your Honor, the testimony will show that twelve of the employees listed on the General Counsel's

Exhibit No. 2, were discharged on or about September 18th, and new employees from outside the Pittsburgh Area, were brought in to work at these five stores.

JUDGE NACHMAN: I suppose you're contending that these twelve people were discriminatorily discharged?

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: I think if you can prove that's true, they're still employees.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: That wouldn't affect the composition of the Unit.

MR. LADOV: I'm sorry, Your Honor. I'm not submitting that so much for the composition of the Unit. It's more as an exhibit to, as our testimony will show, to better show the destruction of the Unit, Your Honor, and the discharges, and the purpose of the discharges and the reasons for the changes that Respondent made.

JUDGE NACHMAN: Well, these exhibits, then, don't relate so much to the 8(a)5 allegation as they do to the 8(a)3?

MR. LADOV: General Counsel's Exhibit No. 2, of course, relates to the 8(a)5.

JUDGE NACHMAN: Well, that's for the purpose of establishing a Unit and going to show a majority.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: General Counsel's Exhibit No. 3, goes mainly to show what you contend was a massacre of the Unit?

MR. LADOV: Yes, Your Honor.

MR. DICKER: We obviously don't stipulate.

JUDGE NACHMAN: I didn't expect you to.

MR. DICKER: Thank you.

JUDGE NACHMAN: That's the reason I added the words, what you contend.

Do you have some motions, Mr. Dicker?

MR. DICKER: Yes, Your Honor.

In connection with the motions, and maybe for you to understand the nature of the motions, we have a series of correspondence with the REgional Director and the General Counsel concerning the Freedom of Information Act.

JUDGE NACHMAN: Now, you're talking about the documents attached to your answer?

MR. DICKER: Well, Your Honor, there's only two of them attached to the answer.

JUDGE NACHMAN: Oh, there are others?

MR. DICKER: There are others. Yes, Your Honor.

JUDGE NACHMAN: All right.

MR. DICKER: And, I just thought maybe that I would like to, in a preliminary manner, offer them. There are a total of four, two of them are attached to our answer, and two of them were not, because they were received and/or sent subsequent to the attainment of the answer.

I'm sorry, excuse me, the filing of the answer.

I mentioned this to Mr..Ladov the other day, and he's familiar with the letters; and, the letters and some other documents I propose to offer, I think have relevance to the motion I'm about to make.

The letters constitute--

JUDGE NACHMAN: I take it he stipulates to their authenticity and reserves the right to object on the grounds of relevance and materiality?

MR. LADOV: Yes, I do, Your Honor.

MR. DICKER: May we go off the record for a moment?

JUDGE NACHMAN: All right. Off the record.

(Discussion was held off the record.)

JUDGE NACHMAN: On the record.

You may proceed, Mr. Dicker.

MR. DICKER: I would first like to move the admission of Respondent's Exhibits Nos. 1 through 4.

JUDGE NACHMAN: Well, in order to keep the record straight, as we were off the record at the time you had these exhibits marked, I'm going to ask the Reporter to show, on the record, that these exhibits were, at Counsel's request, marked.

(The documents, above-referred to were marked as Respondent's Exhibits Nos. 1 through 4, for identification.)

JUDGE NACHMAN: Counsel now moves the admission of each of these exhibits.

I understand from the General Counsel that authenticity is admitted. It's just a question of relevance and materiality.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: And, I'm going to reserve ruling on these exhibits until I hear your motion.

MR. DICKER: Yes, Your Honor. There are two other documents which I'd like to have marked, which I only have one copy of, but which I will endeavor to get additional copies of, I think, perhaps, before the close of the hearing.

JUDGE NACHMAN: All right.

MR. DICKER: Respondent's No. 5 is a set of motion papers filed in the United States District Court for the Western District of Pennsylvania on February 26th, 1976, which I ask the Reporter to mark Respondent's Exhibit No. 5.

(The documents above-referred to were marked as Respondent's Exhibit No. 5, for identification.)

JUDGE NACHMAN: That group of papers constitutes one exhibit?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: You'd better fasten them together so they don't get lost.

MR. DICKER: Yes, we'll have them fastened together.

And, I'd like to have this marked as REspondent's

Exhibit No. 6. It is a transcript of the proceedings before the United States District Court for the Western District of Pennsylvania in Civil Action No. 76-257. The proceedings were held before Judge McCuen on Friday, February 27, 1976.

(The document, above-referred to as Respondent's Exhibit No. 6, for identification.)

MR. DICKER: May we go on the record again, for a moment?

JUDGE NACHMAN: You're on the record.

MR. DICKER: I also ask to have marked as Respondent's Exhibit No. 7, the order of the United States District Court for the Western District of Pennsylvania in Civil Action 76-257. The order is dated February 27, 1976 and signed by Judge McCuen.

(The document, above-referred to was marked as Respondent's Exhibit No. 7, for identification.)

JUDGE NACHMAN: Do I understand the same stipulation for authenticity goes to Respondent's Exhibits 5, 6, and 7?

MR. LADOV: As to five, yes, Your Honor. I have a question about the relevancy of--

JUDGE NACHMAN: Well, you're, of course, reserving relevancy on all of them. I'm talking about, now, authenticity.

MR. LADOV: Your Honor, included in Respondent's Exhibit No. 5 are some affidavits which are pure hearsay on hearsay,--

JUDGE NACHMAN: That may be. Were they filed in the court proceedings?

MR. LADOV: Yes, they were. They were all authentically filed in the court proceedings.

JUDGE NACHMAN: Then they're authentic documents. I'm not talking about relevancy.

MR. LADOV: They are authentic documents. I certainly can agree to that.

JUDGE NACHMAN: That's all we want to know.

MR. LADOV: As to Respondent's No. 6,--

JUDGE NACHMAN: Six is a transcript.

MR. LADOV: Again, I question the relevancy of six, but not the authenticity. And, again, the question of relevancy of seven, but not the authenticity, Your Honor.

JUDGE NACHMAN: All right.

MR. DICKER: I will make a motion to have admitted into evidence Respondent's Exhibits 5, 6, and 7.

JUDGE NACHMAN: I make the same ruling with respect to the first four.

MR. DICKER: Thank you, Your Honor.

Your Honor, I'd like now to move for a continuance of the hearing on the following grounds,

The complaint in this matter as indicated in the formal exhibits was issued on November 26th, 1975 and served shortly thereafter. As Respondent's Exhibits 1, 2, 3 and 4 show, a series of requests were made upon the Regional Director for certain evidence and information which the Board had gathered in the course of it's investigation.

That evidence was denied by the Regional Director and the Employer-Respondent in this case continued throughout December, January, and February, promptly in each instance, to request the appropriate documents and exhau[illegible] the appropriate administrative remedies afforded to the Respondent within the office of the General Counsel; because, at that point, we only were entitled to remedies within the office of the General Counsel. We exhausted those remedies when we received a letter dated February 17, 1976, the last possible day for response by the General Counsel, denying our requests.

I don't want to argue the merits of our request at the present time, nor do I want to get involved in what I think is the Board's relatively--and by the Board I'm referring to the General Counsel,--the General Counsel's sortof off-handed way of treating the Freedom of Information Act, and refusing to grant information to the Employer at a stage early enough in the proceedings that we could have an expedited hearing and a conclusion to a rather unfortunate litigation.

We then proceeded in the United States District Court for the Western District of Pennsylvania promptly after the receipt on February 23rd of the February 17th rejection.

At that hearing, Judge McCuen, last Friday, denied our application for a temporary restraining order indicating that he did not think we were able to show or we did show, at that hearing, irreparable harm.

At that hearing, the General Counsel for the National Labor Relations Board, on page 24 of the transcript, which is Respondent's Exhibit No. 6, for identification, made a motion for summary judgment.

Yesterday, we made a cross motion for summary judgment.

There are a series of stipulations appearing on pages 2 through 14 of the record which is Respondent's Exhibit No. 6 for identification.

JUDGE NACHMAN: May I interrupt you for a point of information. Did the court reserve jurisdiction over the main action?

MR. DICKER: Yes, Your Honor. Specifically did not deny our--

JUDGE NACHMAN: He denied the injunction, but reserved jurisdiction?

MR. DICKER: Yes, Your Honor, and I'll come to that again in a moment, as to what he did.

There were a series of stipulations that were entered into concerning the complaint which eliminates all the material issues of fact, and which will allow the District Court of the Western District to enter an order on the cross-motion of summary judgment so that there are no additional papers and no additional delay that would occur during the course of that court proceeding.

Now, in the course of that hearing, the Counsel for the General Counsel, on pages 4 and 5 of the transcript, which is Respondent's Exhibit No. 6, for identification, admitted that, and I will read it, "However, it is my understanding from the review of the file that there may be some information in the file which would not be of any benefit, in our opinion, to the Plaintiff,"--that was Florsheim who was the Plaintiff -- "but, which the Plaintiff",--Florsheim, again,--"had he seen it, would probably want to use it in his defense.

So, I would say there was information in the file which the Plaintiff would probably want to use in his defense, but that said information did not rise to the level of evidence which would show that he did not commit the unfair labor practice."

Whatever evidence that is, Your Honor, is evidence that we have not discovered, which the General Counsel, there represented by Mr. Peter B. Hoffman,--

JUDGE NACHMAN: Would you read that again for me. It doesn't make sense to me.

MR. DICKER: Maybe I ought to read the entire quotation.

JUDGE NACHMAN: As I understand it, and tell me if I'm wrong, you say that the General Counsel is conceding that there is some information in the file which it would seem you might want to use; but, is he saying there that that is not in the form of evidence that you could use. Is that what he's saying?

MR. DICKER: No, I think he says that this information does not rise to the level of evidence which would show that they did not commit the unfair labor practice. I think he is saying, there, Your Honor, and you can read the entire thing, pages 4 and 5. It's not particularly long.

He is saying there, Your Honor, that, in his opinion, the evidence which is in the file, we, the Respondent, would like to use; but, he does not think it's sufficient to constitute a complete defense to the unfair labor practice.

MR. LADOV: Your Honor,--

JUDGE NACHMAN: Just a minute.

All right, gentlemen.

MR. DICKER: I would also like to point out to you, Your Honor, that in the course of it's proceedings, the Court did say, on page 58 of the transcript, "I think the Freedom of Information Act obviously is going to require you people,"--talking to the Board,--"at sometime to reveal this information. I am just reluctant to take it now and leaf through it and separate it."

Finally, Your Honor, the Court said,--

There is some question as to whether the Court retained jurisdiction in this matter.

The Court said, on page 72, that is the U.S. District

Court for the Western District of Pennsylvania, it said, I have made no ruling on your right, that is the Employer's right, to obtain the documents except in the context of a prayer for an injunction. So, all that was denied to us was an injunction, the Court indicating in the record that the injunction was denied because we failed to show irreparable harm.

The Court did indicate, as I read to you before on page 58, it thinks that, at least, some of the information that we've requested will be discoverable, will be obtainable under the Freedom of Information Act.

Now, Your Honor, on page 24 of the transcript, the Board made a motion for summary judgment. Mr. Hoffman: We move to dismiss and grant the motion for summary judgment, Your Honor.

JUDGE NACHMAN: Summary judgment of what?

MR. DICKER: Summary judgment with respect to the complaint, dismissing the complaint, as I understand it. We made a cross motion for summary judgment yesterday. We filed it with the Court yesterday and with Counsel for the National Labor Relations Board, for the General Counsel.

So, the Court now has before it, based on the stipulations that are in the record,--the record that I'm referring to is Respondent's Exhibit No. 6, for identification, has within that record, all the evidence that it needs together with the briefs that were filed in that matter,--I must say they were lengthy briefs,--to decide what information we're entitled to receive.

I'm sorry that the General Counsel has seen fit not to grant us at least some of the information to be received which we think we were entitled to under the Freedom of Information Act so that we could have prepared and come ready to conclude this case.

We're not seeking a delay for dilatory or reasons other than to get the information which we think we're entitled to under the law.

We, in each instance, promptly filed the appropriate appeals from the initial denials and then promptly moved into the Courts where, indeed, we asked for the information initially just a week or so after the complaint was issued and promptly filed appeals in each instance thereafter.

JUDGE NACHMAN: You have filed an appeal from Judge McCuen's ruling of last week?

MR. DICKER: We have not filed an appeal from the denial of the preliminary injunction because we did ask them for a stay. We felt, frankly, as a matter of legal strategy that we would not get a stay from the Court of Appeals when Judge McCuen, himself, granted a stay.

We have a motion for summary judgment. The motion for preliminary injunction is now "boomp" because we're here.

We think we're going to win the motion for summary judgment, Your Honor and that it will be the Board, if anyone, who will appeal Judge McCuen's ruling.

In the meantime, we think that a delay until after, at least, the motion for summary rejudgment has been decided by the Western District is in order.

We, therefore, on that basis, ask for a continuance.

MR. LADOV: Your Honor, in this regard, Mr. Dicker has stated Judge McCuen did, in fact, deny Respondent's motion for preliminary injunction.

JUDGE NACHMAN: And, he retained jurisdiction over the cause. There are motions and cross-motions for summary judgment.

MR. LADOV: I disagree that he retained jurisdiction over the cause, and I'd like to see the part of the transcript that states that, Sir.

JUDGE NACHMAN: Did he enter an order?

MR. LADOV: Yes, he did. Here's the order, Your Honor.

JUDGE NACHMAN: Did Judge McCuen say anything in the transcript as to what the status of the main proceedings would be?

MR. LADOV: Yes, Your Honor.

If I had the complaint, it would show exactly that all that Respondent asked for in District Court was to enjoin these proceedings and preliminary injunction which Judge McCuen dealt with fully.

MR. DICKER: I think you have to read on. There was additional material in that transcript where we asked the Judge to clarify.

MR. LADOV: All he requested was to enjoin these proceedings, Your Honor.

MR. DICKER: No, I think paragraph 3 asks for a permanent injunction.

MR. LADOV: Your Honor, this is the prayer and you have a copy of the order,--

JUDGE NACHMAN: Just a minute, now. Let me read this.

All right, Mr. Ladov, you may continue.

MR. LADOV: Further, Your Honor, we contend, number one, contrary to Mr. Dicker, that the Respondent in this action, Plaintiff in the District Court action, made a specific prayer requesting--

JUDGE NACHMAN: Does paragraph one of that prayer ask the Court to decree that the Plaintiff is entitled to the information sought?

MR. LADOV: Yes.

JUDGE NACHMAN: Paragraph two asks for the preliminary injunction. Paragraph three, that the preliminary injunction be made permanent?

MR. LADOV: Right, and the order deals specifically with those paragraphs.

JUDGE NACHMAN: It deals with paragraph two. It doesn't say anything about paragraph one.

MR. LADOV: "Accordingly, the complaint for the preliminary injunction is denied. The NLRB shall not be required to reveal the contents of it's files in the NLRB hearing fixed for March 3rd, 1976,-- "

JUDGE NACHMAN: I understand that, but what did he say about paragraph one?

MR. DICKER: On the next page there is something about paragraph one, I believe. If you read the top of the next page, there's something about paragraph one. At least, in my opinion, it does.

It says he's not determining, at this time, our right to receive that information.

MR. LADOV: Your Honor, when Judge McCuen made this order, and I'm sure it's reflected in the transcript of the proceedings, he tied in paragraphs one and two, that--

JUDGE NACHMAN: That's the way you read it. I'm not so certain you're right about that.

MR. LADOV: That's the way he stated it, Your Honor.

JUDGE NACHMAN: What I'm really getting at is this: Suppose, let's assume, the main action, leaving the one side for the request of the injunction, the main action is still pending before the Court. Suppose you got, now, a motion for summary judgment filed by both parties. Suppose the Court should come down with an order Friday or Monday of next week saying he thinks the Plaintiff was entitled to the matter he has requested. Where does this proceeding stand now?

MR. DICKER: Your Honor, in my opinion--

JUDGE NACHMAN: Just a moment, Sir.

MR. LADOV: We're arguing a District Court case, and if you would like to give us a few minutes to prepare, I certainly would be willing to argue the District Court Case, that we've had--

JUDGE NACHMAN: I'm not asking you to argue or decide for Judge McCuen what kind of decision he's made. He decides that for himself.

MR. LADOV: I understand. We've had this--

JUDGE NACHMAN: I'm just trying to determine, now, the best I can, what he meant. I know what he said.

Let's pass that for a moment.

One other question I'd like you to straighten out for me, as I understood the colloquy between Counsel and the District Court, the General Counsel conceded that there was some information in the files which, if the Respondent in this proceeding saw, he might want to use. What kind of information is that? What's the nature of it?

MR. LADOV: Your Honor, the nature of the material, as discussed in District Court,--Judge McCuen was asking questions regarding the case, United States vs. Brady in Criminal Law, applicable to criminal cases, and that was the initiation of that discussion,--is there any Brady material in your files?

We, of course, contend that Brady has no applicability to these proceedings. That is the origination, Your Honor, of that colloquy that you are interested in.

JUDGE NACHMAN: Well, you haven't answered my question. My question is, what is the nature of this material that you or the Board admits, if the Defendant saw, he would want to use in this proceeding?

Are they statements that you took from witnesses?

MR. LADOV: Yes, Your Honor. There are some sentences, some paragraphs, maybe, in certain affidavits which the Respondent might find favorable to his case. Of course,--

JUDGE NACHMAN: Is there anything else that you know of?

MR. LADOV: In good faith, Your Honor, no.

JUDGE NACHMAN: All right, then, if it consists only of statements taken from witnesses, then those witnesses that are called, the Respondent,here, will be entitled to see those statements after the witness testifies.

MR. LADOV: Yes, he will, Your Honor.

JUDGE NACHMAN: So, he will then have that information available to him.

MR. LADOV: Yes, he will.

JUDGE NACHMAN: Under Board rule. And, you say there's nothing else that you think the Respondent in this proceeding might want to utilize as being of a exculpatory nature.

MR. LADOV: Again, your Honor, I can't think of anything else of an exculpatory nature in the file.

JUDGE NACHMAN: Anything else you wish to say?

MR. LADOV: Your Honor, I would like to read into the record,--

JUDGE NACHMAN: Why read into the record material that's an exhibit with the record?

MR. LADOV: Well, I'd like to, then, point out in this exhibit of the transcript, the Court starts to make it's order; and, in our opinion, it's very clear, Your Honor, that he denied the complaint in its entirety. It's contained in the transcript. He starts to discuss about the documents and clearly states he will not order us to turn over the documents. And he clearly states that he will not enjoin the hearing.

I don't know what could be more final than that, sir. And, I strongly disagree with Mr. Dicker's interpretation.

JUDGE NACHMAN: Anything else you wish to say, here, Mr. Dicker?

MR. DICKER: Yes, Your Honor, I think that if you read the transcript, especially the last few pages, both Mr. Wallace and Mr. Soles who were there on behalf of Florsheim, asked the Court to clarify what it meant, as there was obvious confusion as to whether he was only denying the motion for preliminary injunction or denying the entire--dismissing the entire complaint. He did not dismiss the complaint. A Federal Judge most certainly knows how to draw an order saying, the complaint is hereby dismissed. He doesn't have to deny any motions for preliminary injunction if he's going to dismiss the complaint.

JUDGE NACHMAN: Well, I'm convinced he knows how. The only question in my mind is, did he do it?

MR. DICKER: He didn't, Your Honor. He didn't do it for a couple of reasons. First, he didn't do it because he said in his order, at the very last part of his order that the application of the Freedom of Information Act in NLRB proceedings generally is not decided by this order. This order merely denies a complaint for a preliminary injunction. Merely denies the complaint for a preliminary injunction.

And, again, I think, if you read the entire transcript, especially the last three or four pages, Mr. Soles, Mr. Wallace both ask the Court whether or not he meant that he was, in effect, dismissing the complaint. The Court said he is not ruling on our right to obtain the documents,--

MR. LADOV: Your Honor, I object to the--

JUDGE NACHMAN: When Counsel is speaking, don't interrupt.

MR. LADOV: I'm sorry, Sir.

MR. DICKER: We've offered this document, and I think it's highly relevant. I think that, perhaps, the Administrative Law Judge ought to be able to read it and see what the entire document says, because when you read only from one page or another page, you can read anything out of context. I agree with that. I don't think I'm reading out of context. My understanding of this document,--I wasn't at the Court proceedings. My understanding of this document, from reading it, is that there was no denial or dismissal of our complaint. Nor, does the order dismiss our complaint.

Our complaint is still there. We filed a motion for summary judgment; but, I think that that matter is now pending before the District Court and will be decided by the District Court.

JUDGE NACHMAN: All right, gentlemen. The motion for a continuance is denied.

Respondent's Exhibits 1 through 7 are each rejected, but they will be placed in the rejected exhibit file, and become Rejected Exhibits 1 through 7, respectively.

I'm doing so for this reason: I don't think the question of compliance with the Freedom of Information Act is for me to determine. I merely want to preserve the record so that you will have something for review if and when this case gets to the Court of Appeals.

But, on your motion papers, your request to the Regional Director, his refusal to provide the information, this is all adequately shown by the exhibits which you have offered which I have rejected. Then, the Court of Appeals, if and when the motion is raised there, can say whether the Board acted properly or improperly. If it acted improperly, we refuse to force any order in that event. I will make no determination as to the correctness of the Regional Director's or the General Counsel's refusal to supply the information. I think that's an administrative proceeding for him. He has acted and the rule is binding as far as I am concerned.

Proceed.

MR. DICKER: I have one additional motion, if I might, Your Honor. I would like to make a motion to have the witnesses sequestered. I think that there will be serious issues of credibility and serious issues as to what one person said to another person, in or out of the presence of other people; and, apparently, from the complaint, an alleged pattern of allegedly making certain statements; and, I think it is highly prejudicial to the Respondent to have one witness listen to the testimony of another witness; and, therefore, move that each witness be sequestered.

JUDGE NACHMAN: Well, the Board's rule, as I understand, it, or the Board's construction of it's rule is that any person alleged to the complaint, be it an 8(a)3, is entitled to be present in the Hearing Room. He is, in fact, a party to the proceeding. He is entitled to be present. Any person who is not an 8(a)3, the General Counsel will find a place to make you comfortable close by so that they can be called when needed.

I want to caution Counsel that I assume no responsibility whatever for the enforcement of the rule. That's a matter that rests with Counsel.

If Counsel observes that a witness should not be in the Hearing Room and he is in the Hearing Room, and that witness is later called to testify and he does not call this to my attention, I will not be responsible for the enforcement of the rule.

In other respects, the motion is granted with this understanding: Each Counsel will be entitled to have one representative present to assist in the presentation of his case in the orderly conduct of the proceeding.

With that information, I would like to know who the General Counsel selects?

MR. LADOV: Your Honor, if I can ask for a clarification. The alleged discriminatees named in the complaint, they, of course, may remain at the proceedings?

JUDGE NACHMAN: That's right. You are entitled to have with you one person who would, otherwise, be excluded under the rule, present with you during the Hearing.

MR. LADOV: After everyone testifies, after each individual testifies, they are, of course, allowed back into the room?

JUDGE NACHMAN: That depends. Do you intend to recall them on rebuttal?

MR. LADOV: Then, my representative would be Gary Best.

JUDGE NACHMAN: Gary Best. He is entitled to sit at the Counsel Table.

Does the Charging Party plan to call any witnesses?

MR. COOPER: No, Your Honor.

JUDGE NACHMAN: Do you wish anyone present with you?

MR. COOPER: That would be Mr. Best, also, Sir.

JUDGE NACHMAN: All right. How about the Respondent?

MR. DICKER: Well, as far as witnesses go, the Respondent, at this time, doesn't know whether it's going to call any witnesses, depending again on the evidence.

You know, we are really in the dark, Your Honor, as to the nature of many of these charges. That was why the Freedom of Information Act request was made.

JUDGE NACHMAN: I don't think you're quite as much in the dark as you pretend.

I think you have as much knowledge of what went on in these cases as a Respondent usually has.

MR. DICKER: Well, I beg to differ with you, Your Honor.

JUDGE NACHMAN: Well, you're entitled to your opinion. I may be wrong. I'm just telling you what I suspect.

Then, the only thing I can suggest to you is, you just have anyone you wish present in the Hearing Room; and, if you find you want to call that person as a witness, you take the risk of whether you'll be permitted to call them.

MR. DICKER: Your Honor, sitting at the Counsel Table with me is Mr. Jeffrey Lyon who is an attorney and house counsel to Florsheim.

JUDGE NACHMAN: Well, he's associated with you in the proceedings.

MR. DICKER: He is, in no way, going to be involved in the testimony.

JUDGE NACHMAN: Well, then, he's not subject to the rule.

MR. DICKER: Right. I would then ask to have Mr. Lou Brien.

JUDGE NACHMAN: How is that spelled?

MR. DICKER: B-R-I-E-N.

MR. LADOV: Your Honor, I intend to call Mr. Brien, and I would think he would be excluded under my witnesses.

JUDGE NACHMAN: No. Have you subpoenaed Mr. Brien?

MR. LADOV: No, I have not. I have orally informed him of this, and I have informed his attorney.

JUDGE NACHMAN: I suppose he will be one of your first witnesses?

MR. LADOV: Yes, he will, Your Honor.

JUDGE NACHMAN: Mr. Brien is not subject to the rule.

Now, can the General Counsel find someplace where the witnesses can be made comfortable? I'm not going to have them standing around the halls.

MR. LADOV: Could I have five minutes to do this, Your Honor?

JUDGE NACHMAN: From what I've observed here, you'll need a little time to get that set up.

Now, let me say to you that the only witnesses excluded are--I'll put it differently.

Except for the parties named in the complaint as 8(a)3's and except for Mr. Best and Mr. Brien, all witnesses are to be excluded from the hearing while the hearing is in progress.

MR. LADOV: May we go off the record for one small exception, Your Honor?

JUDGE NACHMAN: Off the record.

(Discussion held off the record.)

(A short recess was taken.)

JUDGE NACHMAN: On the record.

Mr. Ladov, you said you wished to make an opening statement?

MR. LADOV: Your Honor, the case to be presented by Counsel for the General Counsel arises from an organizational campaign involving the employees of Respondent's five Pittsburgh Area stores.

The testimony will show that this campaign began in March of '75 and reached it's full height on August 28th, 1975, when, after obtaining authorization cards from a clear majority of the employees, the Retail Clerks,--

JUDGE NACHMAN: In your view, how many employees are there in the Unit?

I think that's been stipulated.

MR. LADOV: Yes. Twenty-two, Your Honor.

JUDGE NACHMAN: I see someone took those two exhibits, here from me.

Off the record.

(Discussion held off the record.)

JUDGE NACHMAN: On the record.

All right, how many employees are there in the Unit?

MR. LADOV: On August 28th, twenty-two, Your Honor.

JUDGE NACHMAN: How many, according to your view of the evidence, signed cards?

MR. LADOV: Seventeen, Your Honor.

JUDGE NACHMAN: I take it you're going to prove the majority by proving the authenticity of those cards?

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: Is there any dispute about those cards, as far as you know?

MR. LADOV: As far as I know, no. I haven't --

Mr. Dicker has not raised this issue with me. I do not know of any.

JUDGE NACHMAN: Maybe his position is that, I don't know. I've never seen them. I don't know where they are or what they are, and--

MR. LADOV: Mr. Dicker has never seen these cards.

JUDGE NACHMAN: All right. Go ahead.

MR. LADOV: I was saying that, after obtaining authorization cards from a clear majority of the employees, Retail Clerks Local #1407 requested Respondent to recognize it as the bargaining agent representing it's full-time and regular part-time salesmen and non-selling employees.

The evidence will show that Respondent's--

JUDGE NACHMAN: One further interruption. At what date do you contend this majority was obtained?

MR. LADOV: It was obtained on August 28th, 1975. Respondent received the request. The request was mailed on the 28th. They received it the 29th of August.

JUDGE NACHMAN: Did they reply?

MR. LADOV: No, they did not. Not in writing.

JUDGE NACHMAN: Go ahead.

MR. LADOV: The evidence will show that Respondent's response to this request was both swift and negative. The following day, August 30th, not August 28th as the Respondent contends, and without warning, the Respondent discharged employee Ronald Bakowski, a Union adherent.

The Respondent then continued to counter the Union's lawful request by initiating a series of unlawful interrogations and threats as alleged in paragraph six of the complaint.

Respondent's unlawful campaign was intensified when Mr. Brien and Mr. Silverhorn, named as agents of Respondent, met in Pittsburgh with the individual store managers on September 8th and 9th.

General Counsel will show, store by store, Your Honor, that the unlawful threats and interrogations continued until Respondent had actually learned that, in fact, a majority of the employees did support the Union.

With this knowledge, Respondent, then, on September 18th, without prior notice or warning, discharged all of it's part-time employees. Eleven out of the twelve part-time employees discharged supported the Union.

Further, Respondent chose one of the main Union adherents, George Macko, and transferred him to another store expressly against his wishes. This transfer produced a great burden to Mr. Macko.

JUDGE NACHMAN: Are you contending the transfer was discriminatorily motivated?

MR. LADOV: Yes, we are, Your Honor.

Your Honor, we will very briefly present our case in the order that we will begin with some background on the organizational campaign. We will then, immediately, get into Mr. Bakowski's discharge, which, we contend, was the initial response of Respondent, and then we will call employees, by each store, grouping them by stores, and they will testify to the interrogations, threats, and also the authenticity of their cards.

Finally, Your Honor, we will call to testify, a group of employees that were brought into Pittsburgh for the first time on September 18th, to replace these part-time employees. Their testimony will clearly show that the decision to lay-off or discharge part-time employees was made after the Union's request for recognition.

JUDGE NACHMAN: Let me ask you, these replacements, were they put on as part-time or full-time?

MR. LADOV: Full-time, Your Honor. They were working for Florsheim in other cities of the country.

Finally, Counsel for the General Counsel contends, that as a result of Respondent's flagrant and pervasive unfair labor practices, of the massive interrogations and threats and unlawful discharges and transfers, that the holding of a fair, uncoerced election is impossible.

Thusly, we submit that the actions taken by Respondent in response to the Employees lawful activities are so serious and substantial, Your Honor, in both character and effect, as to warrant the entry of a remedial order requiring the REspondent to recognize and bargain with the Union.

JUDGE NACHMAN: In other words, you want me to sell or rent it.

MR. LADOV: Yes, Your Honor.

And, now I'd like to call my first witness.

JUDGE NACHMAN: Well, let's find out, first, if Mr. Dicker wishes to respond at this time?

MR. DICKER: I think I will withhold response until the conclusion of General Counsel's case.

JUDGE NACHMAN: All right. Call your first witness.

MR. LADOV: I call Gary Best, please.

Whereupon,

GARY BEST

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

DIRECT EXAMINATION

Q (By Mr. Ladov) Will you state your name and address, please?

A My name is Gary K. Best. The address is 951 Penn Avenue, Pittsburgh, Pa., 15222.

Q By whom are you presently employed?

A Retail Store Employees Union, Local #1407.

Q And, what is your position with Local #1407?

A I'm an organizer.

Q Mr. Best, were you ever contacted by any employees employed by the Florsheim Shoe Store?

A Yes, I was.

Q Could you describe the contact and conversation?

A I was contacted by telephone by an employee of the Florsheim Shoe Company. I proceeded to set up a meeting with him in early March.

Q And, where did this meeting take place?

A The meeting took place at Schraft's Restaurant in Monroeville Mall.

Q And, who was present at this meeting, Mr. Best?

A Joe Osselburn, George Macko, and Robert Belesky.

JUDGE NACHMAN: Were they all Florsheim employees?

THE WITNESS: They were all Florsheim employees.

Q (By Mr. Ladov) And, what occurred at this meeting, Mr. Best?

MR. DICKER: Objection. The relevance of what occurred at this meeting or the statements made by employees to Mr. Best and Mr. Best to the employees do not have any relevance and certainly are not binding on the Employer, what may or may not have been said.

JUDGE NACHMAN: Well, I think it goes to show the organizational activity. The objection is overruled.

MR. DICKER: Your Honor, with respect to that, unless they show some knowledge,that the Employer had knowledge of that organizational activity at that particular time,--

JUDGE NACHMAN: The objection is overruled.

Q (By Mr. Ladov)What occurred at this meeting, Mr. Best?

A They expressed an interest of forming a Union within the Florsheim Shoe Stores in the Pittsburgh Area. The bulk of the meeting was spent on explaining how you go about forming a Union, what the benefits are, you know, of belonging to a labor organization and what they must do in order to form the Union within the Company.

Q Did anything else occur during this meeting?

A All three employees signed a membership application at this meeting.

JUDGE NACHMAN: You call it a membership application. Is that strictly an authorization card?

THE WITNESS: No, it was not an authorization card. It was a membership application. The type we use for our daily operation.

MR. LADOV: Your Honor, I'd like these exhibits marked as General Counsel's Exhibits No. 4(a), 4(b), and 4(c).

(The documents above-referred to were marked as General Counsel's Exhibits Nos. 4(a), 4(b), and 4(c for identification.)

Q (By Mr. Ladov) Mr. Best, I show you--would you like to see them?

MR. DICKER: Well, he hasn't identified them, yet. I think when you're ready to offer them, I'd like to see them.

MR. LADOV: Of course.

Q (By Mr. Ladov) Mr. Best, I show you what has been marked as General Counsel's Exhibit 4(a). Will you identify that?

A It's a membership application and check-off assignment authorization card for the Retail Store Employees Union, Local #1407. It was signed by Joseph Osselburn.

JUDGE NACHMAN: Is that the document that was signed by Mr. Osselburn on the occasion you just spoke of?

THE WITNESS: Yes, it is.

Q (By Mr. Ladov) And, did Mr. Osselburn execute this document in your presence?

A Yes, he did.

Q And, is that the date which he executed this document in your presence?

A Yes, it is.

Q Is that the date on which you gave him these cards?

A Yes, it is.

Q Did they also return these cards to you at this time?

A Yes, they did.

MR. LADOV: I offer General Counsel's Exhibit 4(a) into evidence.

MR. DICKER: May I see it?

I have no objections.

JUDGE NACHMAN: General Counsel's Exhibit No. 4(a) will be received.

(The document, heretofore marked as
General Counsel's Exhibit No. 4(a)
was received in evidence.)

Q (By Mr. Ladov) I show you now what has been marked as General Counsel's Exhibit 4(b). Can you identify that card, Mr. Best?

A Yes, I can.

Q What is it?

A It's a membership application and check-off assignment authorization card executed by Mr. Robert Belesky on the date, 3-26-75, in my presence.

Q Did you give him this card?

A Yes, I did.

Q On 3-26-75?

A Yes, I did.

Q Did he execute it in your presence?

A Yes, he did.

Q And, is that the date that he executed this card?

A Yes, it is.

Q Did he then return the card to you?

A Yes, he did.

JUDGE NACHMAN: Again, this was signed by Mr. Belesky on the occasion you referred to?

THE WITNESS: Yes, it was, Sir.

MR. LADOV: I offer General Counsel's exhibit 4(b) into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 4(b) will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 4(b) was received in evidence.)

Q (By Mr. Ladov) I now show you what has been marked as

General Counsel's Exhibit No. 4(c). Can you identify that, Mr. Best?

A Yes, I can.

Q What is that?

A It's a membership card and check-off assignment and authorization card, both executed by George Macko.

Q And, is that the card that you gave him at the meeting at the Schraft's Bar on March 26th, 1975?

A Yes, it is.

Q Did he execute that card in your presence?

A Yes, he did.

Q And, is that the date that he executed the card?

A Yes, it is.

Q And, did he then return the card to you?

A Yes, he did.

JUDGE NACHMAN: That was also on the occasion that you just referred to?

THE WITNESS: Yes, that is, Sir.

MR. LADOV: I offer General Counsel's Exhibit No. 4(c) into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 4(c) will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 4(c) was received in evidence.)

Q (By Mr. Ladov) I have a few more questions regarding these cards.

Mr. Best, I show you General Counsel's Exhibit 4(a), 4(b) and 4(c), and I show you the back of these exhibits. Would you please describe what is on the back of these exhibits?

They are not on the photostat, Your Honor.

MR. DICKER: Let me see what you're looking at. I don't--

MR. LADOV: Do you have a motion?

MR. DICKER: I have an objection. The exhibit is in evidence and there's writing on the back which is legible. I don't understand why he has to describe what's already an exhibit in evidence.

MR. LADOV: I'd just like to explain what it is, Your Honor.

JUDGE NACHMAN: Well, do you want some explanation? Let me see those.

Well, Mr. Best, on Exhibits 4(a), (b), and (c), there appears on the back of each exhibit a handwritten legend. Do you know who put that there?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: Who did?

THE WITNESS: I did, Sir.

JUDGE NACHMAN: And, when did you put it there?

THE WITNESS: On that date, 3-26, after I received the cards from the individuals.

Q (By Mr. Ladov) And, is it your practice, Mr. Best, whenever you receive cards of this type, to write your initials and the date you received them,--

JUDGE NACHMAN: Well, what difference does it make whether it's his practice or not. He did it this time, and it's not important whether it's his practice or not.

Q (By Mr. Ladov) Do you do it for all cards that you receive, Mr. Best?

A Yes, I do it for all cards received.

Q Mr. Best, after this meeting, could you briefly describe what then happened regarding the organizational campaign of the Florsheim employees?

A For several months, there was very little activity although I did remain in contact with these individuals. They told me they were trying to get around to the other stores to talk to the other people.

Then, a couple of months later, I received some cards and we, from that point on, rapidly moved into a majority situation.

Q When did you receive the majority of cards?

A On September 28th, I believe. Or August 28th.

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 5, please.

(The document above-referred to was marked as General Counsel's Exhibit No. 5, for identification.)

Q (By Mr. Ladov) I show you what has been marked as General Counsel's Exhibit No. 5. Can you identify that, Mr. Best?

A Yes, it's the demand letter mailed from our Local Union over the signature of the president of the Local to Mr. H. B. Levine, Florsheim Shoe Company, 200 Fifth Avenue, Pittsburgh, Pa. It's a letter demanding recognition for all full-time and part-time selling and non-selling employees and to begin negotiations for an agreement.

MR. LADOV: I offer General Counsel's Exhibit No. 5 into evidence.

JUDGE NACHMAN: Any objection to GC 5?

MR. DICKER: May I ask a question on voir dire?

JUDGE NACHMAN: Voir dire, yes. Not cross examination.

MR. DICKER: Not cross examination.

VOIR DIRE EXAMINATION

Q (By Mr. Dicker) Mr. Best, you didn't sign this letter yourself, did you?

A It was sent by the president of the Local.

Q Do you know what date it was mailed?

A It was mailed on that date, on the letterhead.

Q How do you know that?

A Because I took it to the mail box.

Q And, how was it mailed. Do you know?

A It was mailed by registered mail with a return receipt requested.

Q At what time of the day?

JUDGE NACHMAN: I can't hear you.

Q (By Mr. Dicker) At what time of the day?

A It was mailed about 12 o'clock.

END OF VOIR DIRE EXAMINATION

MR. DICKER: I have no objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 5 will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 5 will be received in evidence.)

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 6.

(The document above-referred to was marked as General Counsel's Exhibit No. 6, for identification.)

Q (By Mr. Ladov) Mr. Best, will you examine what has been marked as General Counsel's Exhibit No. 6. Can you describe what that is, please?

A That's a return receipt that was attached to the demand letter mailed to Mr. H. B. Levine at 200 5th Avenue, Pittsburgh, Pa.

Q And, does that exhibit show that the letter was received?

A Yes, it does, on August 29th.

MR. LADOV: I move General Counsel's Exhibit No. 6 be admitted into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 6 will be received.

(The document, heretofore marked as General Counsel's Exhibit No.6 was received in evidence.)

Q (By Mr. Ladov) Mr. Best, at the time, on August 28th,--

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 7.

(The document above-referred to was marked as General Counsel's Exhibit No. 7, for identification.)

Q (By Mr. Ladov) I show you what has been marked as General Counsel's Exhibit No. 7. Can you identify that, please?

A That's an identical copy of the demand letter that was mailed to Mr. Levine, only this copy was mailed to Mr. L. C. Brien, Florsheim Shoe Company, 130 South Canal Street, Suite 200, Chicago, Illinois. It's identical to the original demand letter.

MR. LADOV: I offer General Counsel's Exhibit No. 7 into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 7 will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 7, was received in evidence.)

Q (By Mr. Ladov) Mr. Best, for a minute, may we go back to the March 26th meeting. At this meeting, did you give the employees present any information regarding the Union?

A Yes, I gave them a number of booklets; the booklet is entitled, "It Pays To Belong". It's a historical outline of the Retail Clerks Union. It covers some points of the labor law and brings out some of the benefits of belonging to a labor organization.

I also gave them a pamphlet. It's entitled, "To Protect the Rights of the Public", which is a pamphlet published by the Federal Government for the National Labor Relations Board. It gives a brief synopsis of employees' and Employers' rights during an organizing campaign.

Q Anything else?

A I gave them a number of membership applications and a number of mail-back, prepaid envelopes.

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 8.

(The document above-referred to was marked as General Counsel's Exhibit No. 8, for identification.)

Q (By Mr. Ladov) Mr. Best, I show you General Counsel's Exhibit No. 8. Can you identify that, please?

A That's a meeting attendance record for a Union meeting that was held on 9-4-75 for the employees of the Florsheim Shoe Company at 10 p.m., at the Union Hall.

Q And, what does that record demonstrate? What is the purpose of that record?

MR. DICKER: Objection.

MR. LADOV: I withdraw that question.

Q (By Mr. Ladov) What is the purpose of what has been marked as General Counsel's Exhibit No. 8?

MR. DICKER: Objection.

JUDGE NACHMAN: Well, he can state for what purpose he made or kept this record. I don't know that it's binding on the Respondent in any way. He may have had some purpose in doing it.

MR. DICKER: All right. You made your ruling.

THE WITNESS: We keep meeting attendance records to show who attended our meetings on what date and what time. It lists twelve signatures of the employees of Florsheim Shoes that signed in as they came to the meeting.

Q (By Mr. Ladov) And, is that your,—

MR. DICKER: Excuse me. I don't want to interrupt you, but has this been offered into evidence?

JUDGE NACHMAN: It hasn't been offered, no.

MR. LADOV: It's been marked.

MR. DICKER: All right.

Q (By Mr. Ladov) Is that your handwriting there, Mr. Best?

A On the top it is, yes. Where it says Florsheim Shoes and where it fills in the blanks.

JUDGE NACHMAN: The signatures and what is written under Company and Store is not your writing?

THE WITNESS: No, it is not.

MR. LADOV: I offer General Counsel's Exhibit No. 8 into evidence.

MR. DICKER: I object.

JUDGE NACHMAN: What does this prove?

MR. LADOV: Your Honor, it proves that there was a meeting of the employees on September 4th, 1975; that these employees, in fact, attended that meeting. I intend to ask Mr. Best what occurred at that meeting.

JUDGE NACHMAN: What does it prove? Well, can't you ask him, if it's relevant, what occurred at that meeting. Can you ask him that without having a list of those who attended?

MR. LADOV: I can. It also corroborates the testimony of many of the witnesses who will testify, Your Honor, as to attending this meeting and--

JUDGE NACHMAN: But, what does this establish?

MR. LADOV: It establishes, Your Honor, that, at this time, Mr. Best informed these employees that if they were ever interrogated about the Union, they were to tell the truth, and that, in fact, they--

JUDGE NACHMAN: I'm talking about this exhibit. What does it establish?

MR. LADOV: That these employees were present at the time.

JUDGE NACHMAN: I don't see that it has any relevance.

MR. DICKER: I did object at the very beginning?

JUDGE NACHMAN: Yes, you objected.

All right. I'm going to reject that. This will become Rejected Exhibit No. 8.

That's without prejudice to your right to ask this witness to the extent that it is material, what happened at the meeting.

Q (By Mr. Ladov) All right, Mr. Best. Regarding the meeting on September 4th, what did happen at this meeting?

A It was a general organizing meeting where we covered the law, covered in greater detail what had to be done to organize the stores. We covered the benefits of belonging to a Union. We answered the employees questions. One question that was brought up was, what happens if the Company asks us whether we signed a card or not.

Q What was the answer that you gave them?

A I told them that the best approach, at that point, that the employee should come back to the Company and say, darn right, I signed a card and you're in violation of the law for asking me if I signed one.

Q This meeting occurred when?

JUDGE NACHMAN: September 4th.

Q (By Mr. Ladov) Approximately what time, Mr. Best?

A Approximately 9 or 9:30, it started.

Q How many employees were present at this meeting, Mr. Best?

A Twelve.

Q How do you know twelve employees were present, Mr. Best?

A Twelve.

Q How do you know twelve employees were present, Mr. Best?

A We keep records of meeting attendance.

Q And, how are those records made?

MR. DICKER: Objection.

JUDGE NACHMAN: Well, he asked him how the records are made. He isn't offering the records, yet.

MR. DICKER: Your Honor, he's doing by indirection what you've already ruled he can't do.

JUDGE NACHMAN: No, I don't think so.

Q (By Mr. Ladov) How were those records made, Mr. Best?

A By a sign-in sheet that is signed by the employees as they come into the meeting.

Q And, where is that sheet kept?

A It's kept in our files for each particular campaign.

Q And, where was this meeting held, Mr. Best?

A At the Union Hall.

Q And, where in the Union Hall, was this sheet kept?

A On the front table as you walk in the door.

Q Are the employees instructed to sign this sheet when they come in?

A Yes, they are.

MR. LADOV: Now, I'd like to offer--

Q (By Mr. Ladov) I show you what has been marked as General Counsel's Exhibit No. 8. Is that the sheet that you are referring to regarding the September 4th meeting, Mr. Best?

A Yes, it is.

Q And, were those the employees in attendance at this meeting?

A Yes, they are.

MR. LADOV: I now, Your Honor, would like to offer General Counsel's Exhibit No. 8 into evidence.

MR. DICKER: The same objection.

JUDGE NACHMAN: What finding of fact would you have me make from this sheet?

MR. LADOV: Again, Your Honor, it's just to corroborate Mr. Best's statement and further corroborate statements that other witnesses will make of things they heard at this meeting and other people that, when they were interrogated, they informed Respondent's agents that these people were at this meeting.

JUDGE NACHMAN: The witness has testified the number of employees that were there, what was said at that meeting. I think your only purpose is to show organizational activity. What individuals were present, I don't think has any relevance in this proceeding.

MR. LADOV: All right, Your Honor.

No more questions, Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: I call upon the Board to produce any statements signed or adopted by the witness in the course of it's investigation of this matter pursuant to the Jenx Rule.

MR. LADOV: There are none.

MR. DICKER: May I see General Counsel's Exhibits 4(a) through 4(c)?

MR. LADOV: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Best, let me show you General Counsel's Exhibits 4(a) through 4(c). You described these cards as membership applications?

A Yes, I did.

Q The Judge asked you whether or not they, in fact, designated the Union to act as a bargaining representative for the employees. Is that right?

JUDGE NACHMAN: The documents will speak for themselves on that score.

MR. DICKER: Your Honor, I'm also questioning the credibility. I think that the witness said that they did not.

JUDGE NACHMAN: Well, I don't think that's a material issue. The document speaks for itself. If you want to impeach the witness, you have to do it on relevant material matter. I don't think that's relevant material.

MR. DICKER: Well, Your Honor, it was part of his direct examination. He indicated that they were membership cards and not authorization cards.

JUDGE NACHMAN: I have ruled. You'll have to proceed from that basis.

Q (By Mr. Dicker) Mr. Best, is there a line on these cards for the acceptance of the membership of the member?

A Yes, there is.

Q Was that line ever executed?

A No, it was not.

Q The cards, General Counsel's Exhibit 4(a) through 4(c), they were submitted to the National Labor Relations Board, I believe?

A Yes, they were.

Q And, that would be on August 28th at 12:29 p.m.?

A Yes, they were.

Q Now, these three cards, 4(a) through 4(c), were they part of a group of cards you submitted as evidence that you represented a majority of employees?

A Yes, they were.

JUDGE NACHMAN: In other words, these were not the only three cards you submitted at that time?

THE WITNESS: No, they were not.

MR. DICKER: I think I asked him if they were part of a group.

JUDGE NACHMAN: As long as I understand.

Q (By Mr. Dicker) Did you tell any representative of the National Labor Relations Board that those cards authorized you to bargain on behalf of the employees?

JUDGE NACHMAN: I think the effect of the card speaks for itself.

MR. DICKER: No, I'm asking him whether he told anyone.

JUDGE NACHMAN: I don't think it's relevant whether he told anyone or not.

MR. DICKER: Well, Your Honor, I think his testimony now is certainly, at the very least, very unclear as to what those cards did and what the effects of those--

JUDGE NACHMAN: The card speaks for itself. Whatever it says, that's the effect of it.

MR. DICKER: I think, Your Honor, he characterized the cards in one way; and, now he's saying that he may have characterized them in a different way at a different time.

JUDGE NACHMAN: I don't care what he called them. He may have called them an invitation to a card party. If they authorize the Union to represent them, they authorize them.

MR. DICKER: Your Honor, I think he stated they were membership application cards, at one point; and, then he said that they were authorization cards,--

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JUDGE NACHMAN: Counsel, I have told you several times now, I don't think his characterization has any relevance. It's a question of the legal effect of the card.

Q (By Mr. Dicker) At this meeting back in March, I believe it was March, wasn't it, Mr. Best?

A Yes, it was.

Q When you gave these cards to the individuals, did you tell them what they were?

A Yes, I did.

Q And, what did you tell them?

A I told them it was a membership application for membership in the Local #1407.

Q Did you tell them that the cards authorized you to bargain on behalf of those individuals?

A Yes, I did.

Q You told them that?

A Yes, I did.

Q Between March 26th, 1975--strike that.

After March 26th, 1975, when was the next time you had a meeting with any employees of Florsheim concerning Union organization?

A September 9th.

Q September 9th or September--

Take a look at Rejected Exhibit No. 8.

September 9th or September 4th?

A September 4th. Excuse me.

Q Between the 26th of March and the 4th of September, you had no other meetings with Florsheim employees, either individuals or groups concerning organization?

A What do you mean by meeting?

Q In person conversations.

A No, I did not.

Q What about telephone conversations?

A I had a number of telephone conversations.

Q With whom did you have those telephone conversations?

A Joe Osselburn.

Q Anyone else?

JUDGE NACHMAN: I'm sorry. I didn't hear you.

THE WITNESS: Joe Osselburn.

Q (By Mr. Dicker) Anyone else?

A No.

Q How did it come about that you decided to have a meeting on September 4th, 1975?

A Because we were in a majority situation and we made a demand. It was the earliest time that I could call a meeting for the general employees of Florsheim Shoes.

JUDGE NACHMAN: Had you had, by that time, received what you considered to be a majority of the cards? A majority of the employees?

THE WITNESS: Right.

Q (By Mr. Dicker) And, which employees did you contact?

Did you contact those that signed cards or those that did and those that didn't sign cards?

A I contacted those that signed cards and told them to bring everybody they could bring.

Q At that time, how many cards did you have?

A I believe approximately seventeen.

Q Out of twenty-two?

A Yes.

Q Do you know whether any persons attended the meeting who had not signed cards?

A No, I do not.

Q Although you were in the majority status, you told the employees what the benefits of joining the Union were?

A Yes.

Q Why it was good for them to join the Union?

A We covered the points of their questions.

Q Even though you had a majority?

A Even though we had a majority.

Q General Counsel's Exhibits 4(a) through 4(c) indicate that they were filed with the National Labor Relations Board at precisely 12:29 p.m. on August 28th. Is that right?

A That's when they were docketed.

Q Did you also file a Petition on that day?

A Yes, I did.

Q That's the very same day that you sent a registered letter to Mr. Levine?

A Yes, it was.

Q Did your Petition indicate whether or not you had any response to the request for recognition?

A Yes.

Q Did you have any response?

A No.

Q Did you expect a response between noon on the 28th and 12:30 on the 28th of August?

MR. LADOV: Objection, Your Honor. He's asking for an opinion.

MR. DICKER: I asked what he expected.

JUDGE NACHMAN: I don't think it's relevant. I don't think that block of the Petition has any relevance, here.

MR. DICKER: Let's get the record straight now.

Q (By Mr. Dicker) You sent these letters, or you knew that General Counsel's Exhibit No. 5, which went to Mr. Levine, was sent on the 28th of August, and mailed approximately at Noon, you say.

By the way, do you know who Mr. McGonigle who signed exhibit GC#6 is?

A Yes, I do.

Q Who is he?

A He was an employee of the Florsheim Shoe Company.

Q Was he a supervisor--strike that.

Was he a manager?

A No.

Q Did he have any position other than an employee, that you know of?

A Not that I know of.

Q Do you know what store he worked at on the 29th of August?

A Fifth Avenue, 200 Store.

Q 200 Fifth Avenue Store?

A Yes.

Q Did you send a letter to Mr. Brien by registered mail, as well?

A No, I did not.

Q That was sent by ordinary mail?

A Right.

Q And, you said the meeting on the 4th of September started around 9 o'clock?

A 9:00, 9:30, 10:00.

Q Was it 9:00, 9:30, or 10:00?

A The stores close at 9:30, the suburban stores. It takes approximately 15 to 20 minutes for the employees to get downtown. There were some people there at 9 o'clock. Some came at 9:30. The official meeting started at 10:00.

Q Mr. Best, did you attempt to contact any representative of Florsheim other than through the letters, General Counsel's Exhibits No. 5 and 7?

A No, I did not.

Q You made no attempt to make any telephone calls?

A No, I did not.

MR. DICKER: I have nothing further.

JUDGE NACHMAN: Any redirect?

MR. LADOV: Very briefly, Your Honor.

I'd like to have this marked as General Counsel's Exhibit No. 9, please.

(The document above-referred to was marked as General Counsel's Exhibit No. 9, for identification.)

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Best, I show you what has been marked as General Counsel's Exhibit No. 9. Can you identify that, please?

A It's a petition, an RC petition filed at the National Labor Relations Board.

Q And, what is the docketing number on that petition?

JUDGE NACHMAN: Doesn't it speak for itself?

MR. LADOV: It speaks for itself. I'm sorry, Your Honor.

Q (By Mr. Ladov) Is that the petition that you filed on August 28th, 1975?

A Yes, it is.

JUDGE NACHMAN: Is that your signature on the document?

THE WITNESS: Yes, it is.

MR. LADOV: I move General Counsel's Exhibit No. 9 be admitted into evidence.

MR. DICKER: No objections.

JUDGE NACHMAN: All right. General Counsel's Exhibit No. 9 will be received in evidence.

(The document, heretofore marked as General Counsel's Exhibit No. 9, was received in evidence.)

MR. LADOV: No more questions, Your Honor.

JUDGE NACHMAN: All right. You're excused, Mr. Best.

(The witness was excused.)

JUDGE NACHMAN: We will be in recess until 1:15 p.m. Off the record.

(Whereupon, at 12:15 p.m., the hearing was recesses, to reconvene at 1:15 o'clock p.m., the same day.)

AFTERNOON SESSION

1:15p.m.

JUDGE NACHMAN: On the record.

You may call your next witness, Mr. Ladov.

MR. LADOV: I call ThomasCappello, please, to the stand.

Whereupon,

THOMAS CAPPELLO

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: You may be seated.

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address, please?

A My name is Thomas Cappello, 9044 Pine Heights Place, Pittsburgh, Pennsylvania.

JUDGE NACHMAN: How do you spell the last name?

THE WITNESS: C-A-P-P-E-L-L-O.

Q (By Mr Ladov) Mr. Cappello, were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Would you trace your employment history, for the Judge, please?

A I started employment around June 1st of '73, and was terminated around September 1st of '75.

Q And, where did you work?

A At the Monroeville Mall Branch of Florsheim Shoes.

Q And, in what capacity?

A As a sales clerk.

Q Part-time or full-time?

A Part-time.

Q Were you hired as a part-time salesman?

A Yes.

Q And, what was your regular work schedule?

A I worked two evenings during the week, normally, and a Saturday.

Q And, that was every week?

A Yes.

Q And, what was your rate of pay?

A I earned a dollar per hour and 5% commission on Florsheim Shoes and 3% commission on all other shoes.

JUDGE NACHMAN: Is that your rate of pay for the entire period that you worked there?

THE WITNESS: Yes.

Q And, who was your immediate supervisor?

A Mr. Ronald Moran.

Q Mr. Cappello, did you ever learn of the employees' attempts to organize a Union at Florsheim Shoes?

A Yes, I did.

Q Would you describe how you learned about this, please?

A I was approached by Mr. Joseph Osselburn and George Macko about organizing a Union at the store. They approached me to sign a card that would signify so.

Q Approximately when was this?

A This was on March 29th, 1975.

MR. LADOV: I'd like this marked as General Counsel's Exhibit No.--

JUDGE NACHMAN: No. 10.

MR. LADOV: Your Honor, I've been marking all the cards with a 4 and an alphabet.

MR. DICKER: That's only going to confuse things.

JUDGE NACHMAN: I think it's very confusing. Have the reporter mark this as No. 10.

MR. LADOV: Fine. I'd like to have this marked as General Counsel's Exhibit No. 10.

(The document, above-referred to was marked as General Counsel's Exhibit No. 10, for identification.)

Q (By Mr. Ladov) Mr. Cappello, I show you what has been marked for identification as General Counsel's Exhibit No. 10. Can you identify the signature on that card?

A Yes, that's my signature.

Q And, the date on that card?

A Yes.

Q And, is that the date you signed the card?

A Yes, it is.

JUDGE NACHMAN: The copy you have given me is something else. It has no date on it.

MR. LADOV: The date is right here, Your Honor.

JUDGE NACHMAN: Oh, I see.

Q (By Mr. Ladov) And, did you fill in the entire card, Mr. Cappello?

A Yes, I did.

Q Did you read the card before signing it?

A Yes, I did.

Q And, who gave you this card?

A Mr. Osselburn.

Q And, where were you when you received this card?

A At the shoe store in Monroeville.

Q After you signed it, what did you do with the card?

A I gave it back to Mr. Osselburn.

JUDGE NACHMAN: Mr. Who?

THE WITNESS: Osselburn.

JUDGE NACHMAN: Would it be correct to say that all of the handwritten material on Exhibit GC #10 is in your handwriting?

THE WITNESS: All except for the part that says, "Florsheim Shoe Company".

JUDGE NACHMAN: Do you know who put that on there?

THE WITNESS: No, I don't.

I think it was on there at the time I signed it.

JUDGE NACHMAN: It was on there at the time you signed it? Don't shake your head. Answer out loud.

THE WITNESS: Yes.

Q (By Mr. Ladov) All the writing on the top part of the card is your writing?

A It's mine, yes. And, the signature at the bottom.

MR. LADOV: I offer General Counsel's Exhibit No. 10 into evidence.

JUDGE NACHMAN: Any objections?

MR. DICKER: No objections.

JUDGE NACHMAN: General Counsel's Exhibit No. 10 will be received in evidence.

(The document, heretofore marked as General Counsel's Exhibit No.10, was received in evidence.)

Q (By Mr. Ladov) Mr. Cappello, you testified that you worked part-time for Florsheim Shoes? You were hired as a part-time employee?

A Yes.

Q During your complete tenure with Florsheim, you worked as a regular part-time employee?

A Yes.

Q Do you hold any other jobs?

A Yes, I do.

Q What is that job?

A I'm a social worker at the VA Hospital on Highland Drive

Q Is that a full-time position?

A Yes.

Q Did you ever tell your supervisor, Mr. Moran, that you had a full-time position?

A Yes, he knew of my full-time position.

Q You were discharged from Florsheim around September 18th, 1975. Is that--

MR. DICKER: Objection, objection.

JUDGE NACHMAN: He's tetified that he was discharged around September 1st.

MR. DICKER: Right, and now he's leading the witness to say September 18th. There's a great difference between September 1st and September 18th.

JUDGE NACHMAN: I didn't catch that. Suppose you reframe your question.

Q (By Mr. Ladov) Were you discharged from the Florsheim Shoe Company, Mr. Cappello?

A Yes.

Q When were you discharged?

A It was around the 1st of September.

Q Mr. Cappello, could you relate the circumstances surrounding your discharge, please?

A I was told by Mr. Moran that Florsheim had formed a new policy whereby they were not going to employ part-time people any longer.

Q How did Mr. Moran tell you this?

A By phone.

Q And, did you come to work after you were informed of this?

A No, I didn't.

Q Had you ever heard of this before?

A No, I didn't.

Q Had any supervisors or management ever told you Florsheim's policy of not having part-timers work anymore?

A No, they didn't.

Q This was the first time you learned of that?

A Yes.

Q Were you offered a full-time position at the time of your discharge?

A Not at the time of my discharge, no.

Q Have you ever been offered a full-time position?

A Not concretely, but probably a year before that.

Q A year before that?

A Yes.

Q And, what was your response at that time?

A Well, Mr. Levine asked me on one of his visits out to the store, but I told him I wasn't interested in full-time employment.

Q And, you continued to work part-time after this?

A That's correct.

Q Until your discharge?

A That's correct.

Q Mr. Cappello, were you discharged at the same time the other part-time employees at the Monroeville Store were discharged?

MR. DICKER: Objection. No evidence of anyone else being discharged at this time, nor any evidence that [illegible] knows of any other discharges.

MR. LADOV: Your Honor, Respondent has admitted in his answer that these employees were discharged, the ones alleged in the complaint on September 18th.

JUDGE NACHMAN: According to my records, it's denied. I will check again to make sure.

Paragraph 7 is denied, except that it admits that they terminated Bakowski, per cause.

Well, ask the witness if he knows whether other people were terminated.

Q (By Mr. Ladov) Do you know if other people were terminated at the Monroeville Store.

A I understood that all part-timers were being terminated.

JUDGE NACHMAN: And, was your termination on or about the same time as the others?

THE WITNESS: Yes.

MR. LADOV: I have no further questions, Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: May I ask the Board to produce, pursuant to the Jenx Rule any and all documents this witness may have signed or adopted.

MR. LADOV: There are none, Your Honor.

MR. DICKER: No statements from this witness?

MR. LADOV: No, there are none.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Cappello,--

May I see General Counsel's Exhibit No. 10, please?

Before we get to that, Mr. Cappello, and we will in a moment, you worked two evenings a week and Saturdays at the Monroeville Mall?

A Yes.

Q Generally, what time in the evening did you work?

A Normally from 5:30 to 9:30.

Q And, on Saturdays?

A That would vary. Either early shift or afternoon shift.

Q Now, on March 29th, you saw both Mr. Osselburn and Mr. Macko?

A Yes.

Q They came in to the store?

A No, I believe they were working at the time.

Q They were working at your store?

A Yes.

Q They were employed at the Monroeville Store?

A Yes.

Q Was that on an evening or a Saturday?

A That was on an evening, I believe.

Q March 29th was a Saturday, 1975. Does that refresh your recollection?

A It could have been. I don't know for certain.

Q Now, generally, how many people worked in the store on Saturday?

A Usually all the employees worked at sometime during the day.

Q And, the time you spoke to Mr. Macko and Mr. Osselburn concerning joining the Union, at that time, who else was in the store?

A I don't remember.

Q Was there anyone else?

A I don't recall.

Q You're sure it was March 29th?

A Yes.

Q Well, the card says March 29th. Did you sign it on a later date and have a different date put on?

A No, I'm sure it was March 29th

Q That's in your handwriting?

A Right.

JUDGE NACHMAN: And you filled in whatever date it was. You filled it in at the time?

THE WITNESS: Yes.

Q (By Mr. Dicker) Now, to the best of your recollection and I know it's a long time, what did Mr. Osselburn or Mr. Macko say to you?

A To the best of my recollection, it was that they were approaching me about forming a Union whereby the Union would become our bargaining agent for the Company.

Q And, what did you say to them?

A I thought it was a good idea.

Q And then what, did they give you a card?

A They said I would signify my support by signing such a card.

Q You would signify your support by signing such a card?

A Yes.

Q And, what did you say, then?

A I said, I'll sign it.

Q O.K. Then, what happened?

A Then I signed it.

Q Well, you did more than sign it, didn't you?

A Well, I read it first, and then signed it.

Q You read what, everything?

A Yes.

Q You read the small print on the lower left hand corner of the top of the card? You read the portion I'm indicating? The small print?

A I probably read the whole card.

Q You probably read the whole card.

A I usually read everything I sign.

Q You usually do. Do you remember specifically reading that?

A That's in my recollection. I remember reading it.

Q Including the small print I just indicated?

A Yes.

Q You're sure of that?

A Yes.

Q And, then you filled out the card?

A Yes.

Q You have no idea what time of the day this was?

A I can't be certain, no.

Q You weren't even sure it was Saturday until I pointed out the date to you, were you?

A That's correct.

Q But, you are sure you read the card?

A Yes.

Q But, you don't know what time, and you weren't sure it was a Saturday?

A That's correct.

Q And, was the store busy at this time?

A No, it wasn't.

Q And, you had time to fill out the card?

A Yes.

Q Was the store manager there?

A I don't believe he was.

Q And, then, after you filled out and signed the card, you gave it back to Mr. Osselburn or Mr. Macko?

A To Mr. Osselburn.

Q Are you sure they were both working on that day, the 29th?

A I'm not--

Maybe one of them was leaving or one was coming. They were both there. Now, I don't know whether they were both being paid to work at that time.

Q Did they stay around the whole day? Did they work the normal eight hours?

A I can't recall.

Q You can't recall that, but you can recall reading the card?

JUDGE NACHMAN: I didn't hear an answer to the last question.

THE WITNESS: Yes. I do recall reading the card.

Q (By Mr. Dicker) After you gave the card to Mr. Osselburn or Mr. Macko, you don't remember which, when was the next time you heard about the Union?

A It was probably around the time that I was terminated.

Q Around the time you were terminated. Before or after you were terminated?

A Before.

Q What did you hear?

A I heard that there was a lot of crap about the Union.

Q A lot of crap about the Union?

A Yes.

Q Who told you that?

A Mr. Osselburn and Mr. Macko.

Q That was before you were terminated?

A Right.

Q Did they describe what this was about the Union, other than using the term to describe it, other than saying that there was a lot of crap. Did they say anything else about it?

A That they felt that the Company was going to try to stop the Union.

Q They felt the Company was going to try to stop the Union. Anything else?

A Not that I can recall.

Q And, that was before you were terminated?

A Yes.

Q That would be the end of August?

A It was about that time, yes.

Q And then, you were terminated about the 1st of September?

A Yes.

Q And, did you hear anything about the Union at that time or thereafter?

A Yes, I received several letters and different correspondence from the Union and the National Labor Relations Board after that.

Q Several letters and correspondence from the Union and the National Labor Relations Board. Concerning what?

A I really can't tell you at this time.

Q Did you read it?

JUDGE NACHMAN: You don't recall?

THE WITNESS: I don't recall, right.

Q (By Mr. Dicker) Did you read those letters and correspondence?

A Yes, I did.

Q And, you don't remember what they said?

A No.

Q Do you still have them in your possession?

A I believe I have them at home, yes.

Q You saved them, but you don't recall what they said? Is that right?

A Yeah, I can explain that.

Q Now, did there come a time when you came down to the National Labor Relations Board and spoke to someone?

A Yes.

Q How did that come about?

A I was contacted by Mr. Ladov to come down and talk to him about it.

Q Did anyone other than Mr. Ladov contact you?

A No.

Q And, when was that. In what month, do you remember?

A I really--

I could guess. I can't--

Q Approximately.

A Approximately?

Q Was it '75 or was it '76?

A It was right around the end of the year or the beginning of --

It was a couple of months ago.

Q So, it was either December of '75 or January of '76?

A I don't remember exactly.

Q Did Mr. Ladov tell you you had to come down, or that it was voluntary?

A He said that it was voluntary.

Q Did a Mr. Mike Joyce or a Mr. David Levinson ever contact you?

A No.

Q Now, at the time you were terminated, you spoke to Mr. Moran?

A Yes.

Q And, he told you that the Company had a new policy where it was not going to employ part-time people, but only full-time people?

A That's right.

Q He called you on the phone?

A That's right.

Q Do you remember what day it was? What day of the week?

A No, I don't.

Q And, he told you not to come to work?

A That's right.

Q Did he ask you, at that time, whether you were available for full-time work?

A I don't recall that he did.

Q You don't recall that he did?

A No.

Q Do you know whether he did or he didn't, or you just don't recall?

A I would imagine that he wouldn't, because he knows I wouldn't be interested in full-time.

Q You would imagine, but you're not sure whether he did or didn't?

A No, I'm not positive.

Q Did there come a time in February of 1976 when you had a call from someone in the Florsheim Shoe Company?

A I received no call.

Q No call? No contact at any time in February of 1976 about working full-time?

A No.

Q Are you sure?

A Yes, sir.

Q Mr. Cappello, did you ever show this card to Mr. Moran?

JUDGE NACHMAN: You say, "this card".

MR. DICKER: General Counsel's Exhibit No. 10.

THE WITNESS: No, I didn't.

Q (By Mr. Dicker) Did you ever show it to any Company official?

A No, I didn't.

Q You gave it to Mr. Osselburn or Mr. Macko, and you don't know what happened after that, to the card?

A That is correct.

MR. DICKER: May I have one moment?

JUDGE NACHMAN: Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

Q (By Mr. Dicker) Before or after you were discharged, did you attend any Union meetings?

A No, I didn't.

Q And, other than the incident with Mr. Levine a year or so before you were terminated, you were never offered full-time employment?

A That's right.

Q When Mr. Moran told you that the Company's policy was only for full-time employees rather than part-time employees, did you state in words or substance to Mr. Moran that you were interested in working full-time?

A No, I didn't.

Q Did you ever indicate to Mr. Moran that you were interested in working for Florsheim full-time?

A No, I didn't.

Q Did you ever indicate to any Company representative, manager, or someone above the managerial level, that you were interested in working full-time?

A No, I didn't.

Q Are you, in fact, interested in working full-time?

A No, I'm not.

MR. LADOV: Objection, Your Honor.

JUDGE NACHMAN: Well, he's answered. I don't think it's material.

MR. DICKER: I have no further questions of this witness.

JUDGE NACHMAN: Any redirect?

MR. LADOV: Very briefly.

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Cappello, at the time of your discharge, did Mr. Moran offer you a full-time position?

A Did he offer me?

Q Yes.

A I don't recall that he did.

JUDGE NACHMAN: Do you recall that he didn't?

THE WITNESS: No, I don't.

JUDGE NACHMAN: Anything else, Mr. Ladov?

MR. LADOV: No, Your Honor.

JUDGE NACHMAN: You may step down.

(The witness was excused.)

JUDGE NACHMAN: Call your next witness.

MR. LADOV: I call Ronald Bakowski to the stand, please.

Whereupon,

RONALD BAKOWSKI

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

DIRECT EXAMINATION

Q (By Mr. Ladov) Will you state your name and address, please?

A Ronald Bakowski, 421 Parklowe, Pittsburgh, 15210.

Q Mr. Bakowski, were you ever employed by Florsheim Shoes?

A Yes, from May, 1969 till the end of August, 1975.

Q Will you briefly, during this period of '69 to '75, trace your employment history at Florsheim, where you worked.

A In 1969, I was employed at Florsheim Shoe Shop, South Hills Village, where, approximately a year later, I was transferred to the Florsheim Shoe Shop,Northway Mall, where I worked with Mr. Moran for approximately two years.

It became too much of a distance to travel by the Port Authority.

I talked to Mr. Battaglia, and spoke with Mr. Levine once or twice about having me transferred downtown.

The only thing I could work out was with Mr. Battaglia, to have myself transferred down to his store.

Q Which store was that?

A That's the store at 501 Smithfield.

Q Continue, please.

A I worked there approximately nine months, and I was transferred down to the store at 200 Fifth Avenue.

I worked at that store approximately the same period of time.

Q Then, what occurred.

A I left Florsheim. It was September, '73, and I was approached toward the beginning of October, '73, by Mr. Brower, the manager of the Fifth and Smithfield Store, to come and work for him.

Q What did you do?

A And, I considered it, and I went back to work for the Company.

Q That's Florsheim?

A Right.

Q And, where did you go back to work?

A At the store at 5th and Smithfield.

Q That's the 501 Smithfield Street Store?

A 501 Smithfield, yes.

Q You worked then up until when?

A Up until August, '75, the end of August.

Q During the hiatus in '73 from Florsheim, what did you do?

A I worked for the Johnson & Murphy Shoe Company.

Q And, during your employment at Florsheim from '69 to '75, what was your job?

A I was basically a salesman, with the exception of the time I spent at Northway Mall, where I was the Assistant Manager.

MR. LADOV: Your Honor, at this time, to avoid any problems, may we have a stipulation, Mr. Dicker, that assistant managers are employees as defined in the Act?

MR. DICKER: Yes, so stipulated. Assistant managers in the Pittsburgh Area are employees within the meaning of the Act.

Q (By Mr. Ladov) And, were you a part-time or full-time salesman during your employment with Florsheim?

A A full-time salesman during the full time I was employed with Florsheim.

Q And, what was your rate of pay?

A When I left Florsheim, it was fifty dollars a week plus 5% on Florsheim shoes, commission, 3% on Worthmore, 5% on all other accessorias and sundry items.

Q And, in 1975, when you were employed at the Smithfield Street Store, who was your immediate supervisor?

A Mr. Brower.

Q Mr. Bakowski, did you ever learn about the employees' efforts to organize a Union at Florsheim Shoes?

A Yes.

Q Would you describe when this occurred and the circumstances?

A This was in, approximately, the middle of July of '75. I was approached by Louis Scott, to join the union; and, he began to tell me just a sketchy outline of it; and, he gave me a card at the time. We were interrupted, and it was let go at that time until a later date when I could have a chance to do it.

Q And, where did this conversation occur?

A This conversation occurred in the stockroom at 501 Smithfield.

Q Was anyone else present?

A Not that I could see.

Q Mr. Bakowski, did you speak with any other employees at Florsheim regarding the Union?

A Yes, I did. I spoke with Gregg out at Northway Mall, and Doug Foreman.

JUDGE NACHMAN: What was that name?

THE WITNESS: Gregg.

JUDGE NACHMAN: Gregg who?

Q (By Mr. Ladov) Do you know his last name?

A No, I don't. That's the only name I've ever known him by.

Q And, you spoke with who else?

A Mr. Foreman.

Q How did you speak with Gregg at the Northway Mall?

A Over the phone.

Q Where were you?

A I was at Mr. Brower's desk speaking to him over the phone; and, he just give me in more or less general terms what a Union could do as far as benefits that the employees were not now receiving.

Q Was anyone present during this conversation between yourself, this phone conversation, between yourself and Gregg?

A Mr. Flaherty.

Q Where was Mr. Flaherty?

A Mr. Flaherty was approximately 8 to 10 feet in front of me, by the wrap desk, more or less pacing back and forth.

Q When did this conversation occur, approximately?

A The middle of August.

Q You testified that you also spoke with employee, Doug Foreman. Where did this conversation take place?

A This conversation occurred on the sales floor, late in the evening.

Q At what store?

A 501 Smithfield.

Q And, what was this discussion about?

A The same thing in more specific terms. Mr. Scott was present, at the time.

Q Was anyone else present at this time?

A Mr. Flaherty was also present.

Q Was he there engaging in the conversation?

A No, he was not. He was in the stockroom.

Q How far away is the stockroom from where you were talking?

A Approximately 15 feet.

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 11, please.

(The document, above-referred to was marked as General Counsel's Exhibit No. 11, for identification.)

Q (By Mr. Ladov) Mr. Bakowski, I show you what has been marked as General Counsel's Exhibit No. 11. Can you identify that, please?

A Yes. It's the card I signed to join the Union, Local #1407, Retail Clerks Union.

Q Can you identify that signature?

A Yes, it's mine.

JUDGE NACHMAN: There's a great deal of written material on this document, here. Would it be correct to say that all of the written material is in your handwriting?

THE WITNESS: All of the written material is in my handwriting.

JUDGE NACHMAN: Including the words, Florsheim Shoe Company, Pittsburgh?

THE WITNESS: Yes.

JUDGE NACHMAN: That's in your handwriting?

THE WITNESS: Yes.

Q (By Mr. Ladov) Can you identify the date on that card?

JUDGE NACHMAN: It speaks for itself, doesn't it?

Q (By Mr. Ladov) Did you execute the card on that date?

A Yes.

Q Mr. Bakowski, how did you get this card?

A Mr. Scott gave me the card on the 25th. I was helping one of the new employees who was hired as a stockboy, receive a shipment of shoes. I was showing him the procedure that Mr. Brower wanted, the way he wanted it received, the way he wanted the boxes stacked, and so on; and, Mr. Scott came down. I had the opportunity, right at that time, to fill the card out and return it to him.

Q What do you mean by "came down"?

A I was in the downstairs stockroom.

Q He gave you the card at this time?

A Yes.

Q Did you read the card?

A The general contents of the card, I did not read at the time. I read one later.

JUDGE NACHMAN: How much later?

THE WITNESS: The next day.

JUDGE NACHMAN: Did you read any of the card on the 25th?

THE WITNESS: On the 25th, I read basically the parts pertaining to the filling out of the card and the authorization. I skimmed over it very quickly.

JUDGE NACHMAN: The authorization, you skimmed over?

THE WITNESS: Yes.

JUDGE NACHMAN: Now, when you speak of authorization, which part of the card are you referring to?

THE WITNESS: I'm referring to the bottom part of the card.

JUDGE NACHMAN: How about the legend that's to the left of your signature. Did you read that?

THE WITNESS: Yes, I did.

JUDGE NACHMAN: You read that on the 25th?

THE WITNESS: Not on the 25th.

JUDGE NACHMAN: You read that the next day?

THE WITNESS: The next day. I had the opportunity to look at one in a chance where I wasn't pressured.

JUDGE NACHMAN: I see. What do you mean, when you weren't pressured? You mean, when you had more time?

THE WITNESS: Right, because I was interrupted several times in the process of filling this out, by Mr. Flaherty.

MR. LADOV: I offer General Counsel's Exhibit No. 11, into evidence.

JUDGE NACHMAN: Any objections?

MR. DICKER: No objection.

JUDGE NACHMAN: May I see the original, please, a moment?

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: All right. General Counsel's Exhibit No. 11 will be received in evidence.

(The document, heretofore marked as General Counsel's Exhibit No. 11, was received in evidence.)

Q (By Mr. Ladov) Mr. Bakowski, directing your attention to your discharge. When was the last day that you worked for Florsheim Shoes?

A The 27th, a Wednesday, of August.

Q That was 1975?

A Yes. The 28th was given to me as a day off. I started my vacation as of the 29th.

Q How long was your vacation?

JUDGE NACHMAN: Excuse me. Were you paid for the 28th?

THE WITNESS: We worked a five-day week, and that was the 28th. The Thursday that I had off was the last day, the sixth day.

JUDGE NACHMAN: Were you paid for that?

THE WITNESS: No.

JUDGE NACHMAN: You don't get paid for that day you take off?

THE WITNESS: No.

Q (By Mr. Ladov) Mr. Bakowski, directing your attention to Thursday, August 28th, would you please retrace what you did on August 28th?

A Well, having a day off, I slept in that morning. I got up, came downstairs, called the store. I believe it was Mr. Flaherty that answered the phone. I asked for Mr. Brower, and I asked if the paychecks had come in. He indicated that they had. I dressed, came into town, and picked up my pay. I spent approximately an hour in the store.

Q How did you get into town, Mr. Bakowski?

A Port Authority bus.

Q Approximately what time did you arrive at the Smithfield Street store?

A Between 2 and 2:15.

Q How long did you stay at the Smithfield Street store?

A Approximately an hour.

Q Did you have any conversation with Mr. Brower that day?

A Yes, I did. I had already informed the first manager I worked for about the key, returning the key during the time of vacation. I returned the key to him. He accused me of having duplicates made of it. I indicated to him that this was the only key that I had. This is the key that you gave me two years ago. This is it. I'm giving it back to you for the duration of the time I'm on vacation, in the event you should need it.

Q Did you get your check that day?

A Yes, I did.

Q Then, what did you do?

A I went over to Mellon Bank and cashed it.

Q Then, what did you do, Mr. Bakowski?

A I walked down tothe Fifth and Market Street Store and spent approximately two hours in that store talking with Mr. Ball and Mr. Schneider.

Q Did you see Mr. Levine in the Fifth Avenue store on August 28th, Thursday, August 28th?

A Yes, I did.

Q Did you speak with Mr. Levine?

A Yes, I did.

Q What did he say to you?

A He kidded me about the length of time I had spent in the store, and that if I spent any more time in that store, he's going to put me to work. And, I kidded him back, well, if I work for you, you'll put me on your payroll.

Q What did you then do, Mr. Bakowski?

A He was going out to dinner,--

Q Who is "he"?

A I'm sorry. Mr. Levine.

Q Go ahead.

A He was--Mr. Levine was going out to dinner. I walked him around to where he ate dinner at, and proceeded to go down to Horne's, where I browsed for an hour or two.

Q Then what?

A Then, I went home and spent the rest of the evening at home.

Q That's the only conversation you had with Mr. Levine?

A That was the only conversation, yes.

Q Mr. Bakowski, on August 28th, 1975, that Thursday, during the time you were in either the Smithfield or the Fifth Avenue Store, did either Mr. Brower or Mr. Levine ever mention to you that you were going to be discharged?

A No.

Q Did they ever tell you,you were discharged.

A No.

Q Did they ever mention anything about you being discharged?

A No.

Q Mr. Bakowski, what did you do the next day, Friday, August 29th, 1975?

A On the 29th, I stayed at home the whole day and again slept in. I watched TV through the afternoon and the evening.

Q Did you leave the house?

A No.

Q The whole day?

A I spent the whole day just more or less lounging around the house.

Q And that evening?

A And that evening, yes.

Q Was anyone present in the house with you?

A Yes. There was my mother and my father.

Q Was your father there the whole day?

A Yes.

Q Was your mother there the whole day?

A Yes.

Q Did you speak with either Mr. Brower or Mr. Levine on August 29th, 1975?

A No.

Q Did you receive a call from either Mr. Brower or Mr. Levine on August 29th, 1975?

A No.

Q What did you do the next day, August 30th, 1975?

A On the 30th?

Q That's a Saturday.

A That's a Saturday, right. I got up early. My dad drove me into the bus stop. I went out of town until the second of September.

Q Where did you go, Mr. Bakowski?

A I was at my cousin's house in Cleveland, Ohio.

Q When did you return to Pittsburgh?

A On September 2nd, the day after Labor Day.

Q That's a Tuesday?

A Right.

Q When did you find out about your discharge, Mr. Bakowski?

A When the mail came in on Tuesday. My dad handed me an envelope with my name on it marked "personal". I opened it up and there was a blue memo with a letter from Mr. Brower stating that I was discharged, better luck next time, and the termination notice.

JUDGE NACHMAN: Did they give you any reason for your termination?

THE WITNESS: Uh,--

MR. LADOV: Your Honor, I think I'd like to put this into evidence.

JUDGE NACHMAN: Well, go ahead. I'm sorry.

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 12.

(The document above-referred to was marked as General Counsel's Exhibit No. 12, for identification.)

Q (By Mr. Ladov) Mr. Bakowski, I show you what has been marked as General Counsel's Exhibit No. 12. Can you identify that?

A Yes, this was the letter I received in the mail on the second of September.

MR. LADOV: I'd like this marked as General Counsel's Exhibit No. 13.

(The document, above-referred to was marked as General Counsel's Exhibit No. 13, for identification.)

Q (By Mr. Ladov) Mr. Bakowski, I show you what has been marked as General Counsel's Exhibit No. 13. Can you identify that?

A Yes. This was folded in with the blue memo. It's a copy of a termination notice marked at the top, original sent to retail payroll.

Q When was the first time you saw these two documents?

A The day after Labor Day, the second of September.

MR. LADOV: I offer General Counsel's Exhibits,Nos. 12 and 13 into evidence.

JUDGE NACHMAN: Any objections?

MR. DICKER: No objections.

JUDGE NACHMAN: General Counsel's Exhibits,Nos. 12 and 13 will each be received.

(The documents, heretofore marked as General Counsel's Exhibit Nos. 12 and 13 were received in evidence.)

Q (By Mr. Ladov) Mr. Bakowski, when you returned home on Tuesday, September 2nd, did you receive a phone call from Mr. Brower?

A No, I did not.

Q Did you learn of receiving a phone call from Mr. Brower?

A Yes, I did. My father told me that Mr. Brower had called early Saturday morning and had spoken to my mother.

JUDGE NACHMAN: Now, which Saturday is that? The 30th of August?

THE WITNESS: The 30th.

JUDGE NACHMAN: That's after I was gone, yes.

Q (By Mr. Ladov) You stated that your mother was home?

A Yes.

Q The whole day of August 29th, 1975. Why was she home all day?

A She had had two strokes and was partially paralyzed.

Q Is she living now?

A No, she's deceased.

Q When did she die?

A November 10th.

Q Of '75?

A '75.

Q Mr. Bakowski, I direct your attention to the year 1975. During that year, had you ever been warned or disciplined in any way?

A I had been warned, sometime in June, 1975.

Q Who warned you?

A Mr. Brower had warned me, if I would get into another argument with Mr. Flaherty, that I would be discharged, no matter who started the argument.

Q Did you have an argument in June of '75, sometime, with Mr. Flaherty?

A In the early part of the month, there was a minor disagreement.

Q That's what Mr. Brower was referring to?

A Right.

MR. LADOV: May I have just one moment, Your Honor?

I have another "flu", Your Honor.

Q (By Mr. Ladov) Were you ever warned or disciplined again after this June, 1975 warning?

A No.

Q You stated that you worked for Florsheim Shoes in the Pittsburgh Area from 1969 to 1973. To the best of your knowledge, had any other employees been employed by Florsheim for that long a period of time?

A I don't understand your--

Q Of the employees in the Pittsburgh Stores, who had been employed by Florsheim the longest?

A From that period, 1969 to 1975, myself. I was the one with the highest seniority, the longest tenure in the city of Pittsburgh.

Q Mr. Bakowski, during your employment at Florsheim, have you ever received any compliments, commendations from your Employer?

A Yes, I did. I received, in 1970, a letter from Chicago as to what a customer had written in regards to the service I had given him. It was signed by Mr. Hamilton.

MR. LADOV: I'd like this marked as General Counsel's Exhibit No. 14, please.

(The document, above-referred to, was marked as General Counsel's Exhibit No. 14, for identification.)

MR. LADOV: And, I'd like this marked as General Counsel's Exhibit No. 15.

(The document, above-referred to was marked as General Counsel's Exhibit No. 15, for identification.)

Q (By Mr. Ladov) I show you what has been marked as General Counsel's Exhibits 14 and 15. Can you identify these exhibits, please? These documents.

A Yes, this is the letter that I received. The letter that I received from the Chicago office; and, the second letter is a copy of the letter that I received, that the Company received from Mr. Chalker.

MR. LADOV: I offer General Counsel's Exhibits 14 and 15 into evidence, please?

MR. DICKER: I have an objection to the relevancy of them.

JUDGE NACHMAN: He's asked for a statement of relevancy.

MR. LADOV: Your Honor, I'm attempting to show that, not only does Mr. Bakowski have a long period of employment with Florsheim, but a very good period of employment with Florsheim; and, that it's very unusual that a shoe salesman gets written documentation of his ability. That's the relevancy.

JUDGE NACHMAN: Any objection?

MR. DICKER: Objection on the basis of relevancy.

JUDGE NACHMAN: The exhibits will be received, for what they may be worth.

(The documents, heretofore marked as General Counsel's Exhibits Nos. 14 and 15, were received in evidence.)

MR. DICKER: That's true of all exhibits.

JUDGE NACHMAN: If they're of some value, they're admissable.

Q (By Mr. Ladov) Have you received, during your employment at Florsheim, any oral compliments from either Mr. Levine or Mr. Brower?

A I did receive several oral compliments from Mr. Levine at the time I worked at Northway Mall, at 200 Fifth Avenue and from Mr. Brower when I worked at 501 Smithfield.

Q During the past year, 1975, did you receive any oral compliments?

A Yes.

Q Regarding your job performance?

A Yes.

Q From whom?

A Mr. Brower.

Q Mr. Bakowski, I'd like to show you, very quickly, discharge letter, GC#12. In that letter, it refers to your "down feelings". Had you ever been warned about your "down feelings", Mr. Bakowski?

A No.

Q Had Mr. Brower ever mentioned to you, ever warned you, ever mentioned to you about your "down feelings"?

A No.

Q Had you ever heard this statement before?

A Not until I received the letter.

Q Mr. Bakowski, are you presently taking any medication?

A Yes.

Q What for?

A Epileptic seizures.

Q Are you an epileptic?

A Yes.

Q How long have you had this condition?

A Twenty-one years.

Q At the time of your hire, who hired you?

A Mr. James Hammond.

Q Did you tell him about your condition?

A I did, yes.

Q Did you ever tell Mr. Lavine about your condition?

A Mr. Levine was, I believe, notified by Mr. Hammond.

Q Did you ever tell Mr. Brower about your condition?

A Mr. Brower knew about it.

JUDGE NACHMAN: How did he know about it?

THE WITNESS: Through the seven years I had worked with the Company.

JUDGE NACHMAN: Did you tell him?

THE WITNESS: It was brought up in conversation at meetings that they would have.

Q (By Mr. Ladov) And, what medications to you take?

A I take Mysolene, Phenobarbital, and Dilantin.

Q How long have you taken these medications?

A For about the last eight years.

Q Is it your testimony that you have taken this medication throughout your employment history at Florsheim Shoes?

A Yes.

Q Was Mr. Brower aware that you had taken this medication?

A Yes.

Q How was he aware?

A He had seen me taking the medication in the store several times, and referred to it as me popping pills.

JUDGE NACHMAN: Did you tell him what medication you were taking, and why you were taking it?

THE WITNESS: I did explain to him the reason why I was taking the medication. I reaffirmed what he already knew.

MR. LADOV: No more questions, Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: Your Honor, I would call upon the Board to produce any statements signed or adopted by this witness in the course of the Board's investigation.

MR. LADOV: Let the record reflect that I am giving Mr. Dicker an affidavit executed by Ronald J. Bakowski on September 25th, 1975, in Pittsburgh, Pennsylvania.

MR. DICKER: Is this the only one, Mr. Ladov?

MR. LADOV: That is a copy of the affidavit.

MR. DICKER: Is this the only statement that he either signed or adopted?

MR. LADOV: Yes, it is.

MR. DICKER: And, this statement, I take it, it is the Board's position is that it is not privileged--

JUDGE NACHMAN: He's giving it to you, so he--

MR. DICKER: Well, Your Honor, we're really caught in the middle, here, because certain representations are made to the Court concerning the privileged nature of these documents, and under a different rula, the Attorney Work Product Rule, and now we're being told something very different, here.

It seems to me that the Board can't have it both ways. It can't go on and tell the Court they can't get it because it's privileged and they'll never see it, and then give it to us here under a different rule.

JUDGE NACHMAN: This was given to you under the Board's rule. I forget the section number. I think it's 102.113, if I'm not mistaken, which provides that after a witness has testified, at your request, the Board will make available to you any and all statements in it's possession which have been signed by or adopted by the witness. It was given to you pursuant to that rule.

MR. DICKER: I'm just pointing out to you, Your Honor, that the problem is that the Board has taken inconsistent positions.

JUDGE NACHMAN: I don't know anything about any inconsistent position. I don't know anything about what happened over in Court, and I'm not interested.

MR. DICKER: Well, it's there in the record, Your Honor. For the purpose, at least, of review--

JUDGE NACHMAN: Under the rules, this is made available to you. Now, you make such use of it as you think you can make of it.

MR. DICKER: Your Honor, may I request a brief minutes. I have, number one, to read this document; and number two, apparently, there's some sort of a crisis. I'd like to make a phone call.

JUDGE NACHMAN: The document wouldn't be of any value to you unless you took time to read it.

MR. DICKER: It may be a little longer than just to read this. I want to make a phone call.

JUDGE NACHMAN: All right. Let's be in recess for about ten minutes.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

In the off-the-record discussion, Respondent said that he received a copy of GC#9. When did you receive it?

MR. DICKER: I think we received it in early September. I don't remember the date.

JUDGE NACHMAN: It was received in due course of mailing. The petition is dated the 28th.

MR. DICKER: I think it was probably--

No, I don't think we received it then.

JUDGE NACHMAN: Off the record.

(Discussion held off the record.)

JUDGE NACHMAN: On the record.

The parties stipulate that the copy of Exhibit No. 9 was received on or about September 2nd. I think that's stipulated by both Counsel?

MR. DICKER: Yes, Your Honor.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: All right. Are you ready to cross examine?

MR. DICKER: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Bakowski, you indicated that you began working for Florsheim in May of 1969?

A Yes, sir.

Q Was that May of 1969 or May of 1968?

A May of 1969. I was--there was a slight error that I did make on the deposition that I gave. I did tell Mr. Ladov about it.

Q Now, did there come a time when you were--strike that.

Did you ever work--

Did you work at the Northway Mall from April, 1970 to December, 1971?

A Approximately that period of time, yes, sir.

Q Do you remember being discharged from that job?

A That was the only way that myself and Mr. Battaglia could work out that I could get downtown. Mr. Moran would not transfer me.

Q Who's Mr. Battaglia?

A Mr. Battaglia is a retired manager of Florsheim.

Q He discharged you?

A Yes, sir.

Q Now, who discharged you? Mr. Battaglia?

A No, Mr. Moran.

Q Why did he fire you?

A It was just a--I came to work one morning, and he said, you're discharged. And, he says, give me the key to the store, which I turned over to him. I went downtown and spoke to Mr. Battaglia, and a few weeks later, went to work there.

Q Did Mr. Moran give you any reason for discharging you?

A Not to my knowledge, sir.

Q Not to your knowledge?

JUDGE NACHMAN: Well, I gather--

Was this some sort of a pre-arranged thing?

THE WITNESS: Between myself and Mr. Battaglia. I don't know if there were any arrangements made between Mr. Moran and Mr. Battaglia.

Q (By Mr. Dicker) Did you ever get a copy of the termination notice?

A No.

Q Do you know what your termination notice said?

A No, I do not. It was never shown to me.

Q Did anyone ever tell you that you were being discharged for abusive or disorderly behavior?

A No, sir.

Q No one ever told you that?

A No, sir.

Q And, no one ever gave you a termination notice to that effect?

A No, sir.

Q You were given no--

I notice that, in the course of the direct testimony, you received an employee change notice which gave the reasons for your termination, General Counsel's Exhibit No. 13. Is that right?

A Yes, sir.

Q Did you receive a similar kind of notice back in December of 1971?

A No, sir.

Q You did not? Did you have any arrangement with Mr. Moran about being discharged?

A No, sir.

Q Did you ever speak to Mr. Moran about the fact that you wanted to be discharged so you could work at the downtown store?

A No, sir.

Q Do you know whether or not Mr. Battaglia spoke to Mr. Moran?

A I have no idea.

Q You have no idea. So, you just walked in one day and you were told you were being discharged, and you were given nothing except you handed back your key?

A Right.

Q Now, when you were first hired by Florsheim back in 1969, you worked where? Northway?

A South Hills Village.

Q South Hills Village. Who's the manager there?

A Mr. Hammond. James Hammond.

Q And, there came a time when you were transferred?

A I was transferred to Northway Mall to work with Mr. Moran

Q How long did you work in South Hills before you transferred to Northway?

A Approximately a year.

Q No problem with that transfer?

A No.

Q Now, as I understand your testimony, then--

How long did you work in Northway before you decided to transfer to downtown?

A It was about two years.

Q You got along with Mr. Moran?

A I had no problem with him.

Q No problem. Then you asked him to transfer you?

A I spoke to Mr. Levine and then Mr. Battaglia, the two downtown managers; and, Mr. Levine would not give me any satisfaction. Mr. Battaglia was the only one that could come up with any means or method of getting me downtown.

Q And, what did Mr. Battaglia tell you to do?

A He told me to just continue working out there. He says, I'll take care of it; and, I didn't have anything to do with it from then on.

Q And, then, one day, you just walked in and you were told you were fired?

A Right.

Q Did you ask Mr. Moran, at that time, is this pursuant to an arrangement that you made with Mr. Battaglia?

A No, I did not.

Q Did you think it was pursuant to an arrangement made by Mr. Battaglia?

A With the prior conversation that I had with Mr. Battaglia, I presumed that that's what had occurred.

Q How far before this December discharge did you have this conversation with Mr. Battaglia?

A About 2 to 3 months.

Q During that 2 to 3 month period, did you have any additional conversations with Mr. Battaglia concerning the possibility of you working downtown?

A Not that I can recall.

Q And then, 2 or 3 months after you had this conversation, you walked in one day and Mr. Moran said, you're fired.

And, you said nothing. You gave him back the key and you walked out?

A I did ask for a reason, which I was not supplied.

Q What did he say? No reason?

A He did not give me a reason. He said, just give me back the key. He says, you're fired.

Q He wouldn't give you a reason?

A No.

Q Was he angry?

A He didn't seem that way to me.

Q Did he smile and say, don't worry, it's all pursuant to an arrangement?

A No. I just walked into the store and that was it.

Q Now, this was in December of 1971. That's what you said. Is that right?

A Yes.

Q And, then, shortly thereafter, you went to work for Florsheim at 501 Smithfield?

A Yes.

Q And, that was Mr. Battaglia?

A Yes.

Q And, after working there for about nine months, you were transferred to 200 Fifth Avenue?

A Yes, sir.

Q When was that? The end of 1972?

A It was about that time, yes.

Q Mr. Levine was in the 200 Fifth Avenue Store?

A Right.

Q And, was there any problem with that transfer?

A No.

Q Did Mr. Levine ever indicate to you why he didn't give you any satisfaction back in 1971 concerning your transfer from Northway to 501 Smithfield?

A No, he didn't.

Q And, you left Florsheim briefly in 1973?

A Yes, sir.

Q And, you went to work for who?

A Johnson & Murphy Shoe Store.

Q Where are they located?

A 301 Fifth Avenue Building.

Q That's downtown?

A Right on Fifth Avenue, yes.

Q Why did you leave that job?

A I was asked by Mr. Brower to come to work for him, several times.

Q Did Mr. Brower offer you a better job than Johnson & Murphy?

A He put it to me in the words that the pay would be better, and I'd be able to make more money there than I would at Johnson & Murphy.

Q So, you went back to work in about October of '73 for Florsheim?

A Yes.

Q And, you got along well with Mr. Brower?

A As far as I know, I did, yes.

Q In mid-July of 1975, you were approached by Mr. Louis Scott. Is that right?

A Yes, sir.

Q Near the end of July?

A About the middle of July.

Q And, he asked you to join the Union?

A Yes, sir.

Q Did he give you a card at that time?

A He showed me the card. We were interrupted, and he put the card back in his pocket; and, we both went our separate ways in the store.

Q Was the card that he showed you about the same size as GC #11?

A That was the same form.

Q The same form?

A The same form.

Q And, this was the card he put in his pocket?

JUDGE NACHMAN: Did you sign it before he put it in his pocket, or at a later date?

THE WITNESS: I signed it at a later time.

Q (By Mr. Dicker) From the middle of July, 1975 until the end of August, 1975, did you have any other conversations with Mr. Scott about the Union?

A There were one or two, after work, where he had made mention of the Union.

Q After work?

A After working hours, yes.

Q And, during these conversations, did he ever give you the card again, prior to the 25th of August?

A No, he didn't have the card with him.

Q He didn't have the card with him. Did you ask him for it?

A I mentioned it to him. He said he didn't have the cards with him. He didn't have them on his person.

Q Did you ask him for them more than once?

A When it came up, when the subject did come up, I did ask him for it.

Q You were interested in the Union, were you not?

A Yes.

Q And, I would say that from the first time you saw the card until August 25th, five or six went by?

A Yes.

Q You worked full-time during that period?

A Yes.

Q Generally, how many hours? Forty, forty-eight?

A A little over forty hours.

Q And, what about Mr. Scott. Did he work full-time?

A He worked full-time, also.

Q He worked somewhere between forty and forty-eight hours each week?

A Yes.

Q So, you were in the store with him frequently?

A Yes.

Q And, during that entire five or six week period, Mr. Scott never had the card on him?

A He never kept the cards on his person.

Q And, anything about the 25th of August that was different that he had the cards on his person?

A Well, Mr. Brower had hired a new stockboy. He was starting the 25th of August. Larry Paranzino, I believe his name is. As I said, I was helping him to receive the shipment of shoes that had come in. In the course of receiving the shipment of shoes, that's when he approached me; and, I filled the card out and signed it.

Q And, at the time, you said you only glanced at the part of the card you said was the authorization, that is the part of the card on the left immediately prior to your signature?

A No, the bottom of the card.

Q The bottom of the card?

A I glanced briefly, skimmed the bottom of the card. Later, at a later time, I read the full card.

Q On the next day, you read the full card?

A The next day, yes.

Q Including the material immediately to the left of your signature?

A Yes.

Q Mr. Scott,—did Mr. Scott have the card with him on the next day, the 26th of August?

A Not that particular card. He had that card that I had signed in the mail that night.

Q So, he had another card on the 26th?

A He had another card for Mr. Paranzino, who didn't have a chance to fill it out that night.

Q Mr. Scott had a card on the 25th and the 26th?

A He had two separate cards.

Q He had at least one card on each of those days?

A Right.

Q And, he also had a card on his possession sometime in mid-July?

A Right.

Q And, you expressed an interest in joining the Union?

A Yes.

Q But, from the middle of July until the 25th of August he never had a card on his person?

A Not to my knowledge.

MR. LADOV: Your Honor, I question the--

Q (By Mr. Dicker) He never offered you one, did he?

A Not to my knowledge.

Q Well, he didn't or he did offer you one?

A Not that I can recall at this period of time.

Q Now, Mr. Bakowski, between the middle of July and August 25th, did you attend any Union meetings?

A That was what, the middle of July,--

Q From the time you first talked to Mr. Scott about the Union until the time you signed the card?

A No.

Q Did you ever meet a Mr. Gary Best during that period of time?

A No.

Q Did you ever meet anyone who said they were a representative of Local #1407?

A No.

Q Now, on the day that you signed the card, you said that Mr. Scott was there?

A Yes, sir.

Q Was anyone else present or in the vicinity?

A Mr. Paranzino, the stockboy Mr. Brower had just hired, was receiving the shoes.

Q Anyone else?

A Mr. Flaherty made a quick flash through the immediate area.

Q Who's Mr. Flaherty?

A He's another employee at the store.

Q He's not a manager, is he?

A No.

MR. DICKER: May we have a stipulation that Mr. Flaherty is not a supervisor within the meaning of the Act?

MR. LADOV: He's on the payroll list. We've already agreed that he's an employee.

MR. DICKER: O.K. That's enough for me.

Q (By Mr. Dicker) To your knowledge, did Mr. Scott ever offer Mr. Flaherty a card?

A Not to my knowledge.

Q Did Mr. Flaherty ever talk to you about the Union?

A No.

Q Now, you also said you had some conversations with people at Northway, a Gregg?

A Yes.

Q And, then a Doug Foreman, also at Northway?

A No, he works,--he worked at the 501 Smithfield store.

Q When you spoke to Mr. Doug Foreman, were either Mr. Scott or Mr. Flaherty in the vicinity?

A Mr. Scott, myself, and Mr. Foreman were sitting together.

Q Sitting?

A Yes. We were out on the sales floor. There were no customers in the store.

Q You were sitting in the store together?

A Yes, on the fitting stools. Mr. Flaherty was in the stockroom, directly opposite where we were.

Q Did you talk to Mr. Foreman about signing the card?

A Yes.

Q Did he sign a card?

A I believe he did, very shortly thereafter.

Q What day was this conversation with Mr. Foreman?

A It was in the middle of August.

Q Prior to the 25th, or after?

A I can't recall. I believe it was prior to the 25th.

Q Did Mr. Scott give Mr. Foreman a card then?

A On the day that we spoke, I don't recall.

Q You don't recall.

Now, the last day you physically worked in the store, as I understand it, that was the 27th of August?

A Right.

Q And, had you, at that time, told Mr. Brower, the manager, that you were joining a Union?

A No.

Q Had you shown him your Union card?

A No.

Q And, to your knowledge, did Mr. Scott ever tell Mr. Brower that he had joined the Union?

MR. LADOV: Objection, Your Honor. He's not competent to testify to that.

JUDGE NACHMAN: He said, to his knowledge. He can say yes or no.

THE WITNESS: No.

Q (By Mr. Dicker) What about Mr. Foreman?

A As far as I know, no.

Q Now, you said you slept late on the morning of the 28th?

A Right.

Q That was your day off?

A Right.

Q And, then you called and you asked for Mr. Brower?

A Yes.

Q The purpose of the call was to find out about the paychecks?

A To find out if the paychecks had come in.
It was around one o'clock.

Q It wasn't earlier than that?

A No.

Q Are you sure you didn't get in there before noon time?

A No. I slept until afternoon.

Q You slept till afternoon. What time did you go home the night before?

A The night before?

Q Yes. The last day you worked.

A The last day I worked? The 27th?

Q Yes.

A I got home around six o'clock.

Q Your mother was ill at that time?

A Yes.

Q Did you stay at home that night?

A Yes.

Q And, you said you slept the next day till past noon?

A Yes.

Q Then, you went into the store, and you saw Mr. Brower?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q What did he say?

A He kidded me in the same vein that Mr. Levine had kidded me, about staying in the store. He was going to put me to work. I told him, I said, it's my day off. I said, I'll get my check, and I'll see you. Then, I turned the key over to him, and he made the motion that I had made duplicates of the key.

Q Was he kidding around, or was he serious?

A To me, he sounded very serious.

Q Now, let me understand this. At the beginning of your conversation with Mr. Brower, it was in a rather jocular fashion?

A On a kidding mood, yes.

Q And, then, only after you returned the key, he got belligerent?

A Yes.

Q Any reason why he suddenly became belligerent?

A I have no idea.

Q Did you have any conversation with Mr. Brower earlier that week, or the end of the prior week? That would be the week ending August 29, or the end of the week ending August 22nd concerning alteration of sales tickets?

A Yes, I did.

Q As a matter of fact, you accused Mr. Flaherty of altering sales tickets? Is that true?

A Correction. I posed to Mr. Flaherty a hypothetical case which I had concocted in my own mind of him changing a sales ticket. There was a feed-back in the store to the manager, of information, things that went on, even if it didn't concern the store, if it was personal, the manager knew about it.

The other personnel in the store I could ask. Him, I had to more or less,--

Q Who's him?

A Mr. Flaherty. I had to more or less go through the procedure of the sales ticket, itself. There was no sales ticket change.

Q Didn't you also talk to Mr. Brower about Flaherty and the alteration of sales tickets?

A The next morning I did.

Q As a matter of fact, even as late as the 28th, the day you came in, weren't you talking to Mr. Brower about the alteration of sales tickets?

A Not to my knowledge, I wasn't.

Q Wasn't that what the conversation was about. Not the key, but the duplication of sales tickets?

A The duplication of the key.

Q You're sure of that?

A The duplication of the key.

Q Did you have a fight with Mr. Flaherty concerning the sales tickets?

A I didn't have a fight with him. He had a fight with me.

Q He had a fight with you. He ended up yelling at you?

A I posed the situation, he blew the cork.

Q Let me ask you the question again.

Did he or did he not yell at you, talk to you in a loud voice concerning the sales tickets?

A Yes.

Q And, did you not, in turn, talk to him in a loud voice?

A No.

Q You did not?

A No.

Q Isn't it true, Mr. Bakowski, that on more than one occasion, Mr. Brower talked to you about your arguing with fellow employees?

A Just one occasion that I can recall.

Q Besides that one occasion, weren't there at least a half a dozen occasions when Mr. Brower told you that he was tired of hearing the arguments that you were having with other employees in the store?

A No.

Q Wasn't there several occasions when Mr. Brower said to you that if you don't stop this, I'm going to have to do something about it?

A No.

Q Weren't there a couple of occasions when Mr. Brower sent you to Mr. Levine and told you that Mr. Levine was going to talk to you about your relationships with your fellow employees?

A That was the one time, back in June.

Q Oh, back in June, he did send you to Mr. Levine?

A Back in June.

Q Tell us about that incident. What happened back in June?

A Precisely what you said is the sum total of what Mr. Levine told me. The sum total of the conversation.

Q Well, this is June of 1975. Is that right?

A Right. It basically concerned the same vein as what Mr. Flaherty, I mean, what Mr. Brower had said.

Q You had an argument with Mr. Flaherty?

A It was an argument, yes.

Q Back in June?

A Yes.

Q What was the argument about?

A Everyone in thestore was doing something. Mr. Flaherty was standing around. Mr. Brower was not in the store. I asked to,--I was in the process of doing something. I asked him to dust off,--I handed him a solvent cloth, which we use to dust the shoes, and asked him if he'd go down the line and dust the shoes and bring the shine up on them a little, and take some of the scuffs off. He threw the solvent cloth on the side and said, you're not the boss. I don't have to do it.

Q What did you say?

A I said, all right, fine. And, I walked away.

Q And, that was the argument?

A That was the argument that ensued, and that's what came out to Mr. Brower. That's what Mr. Brower confronted me with.

Q And, that was the argument which Mr. Brower said, if you ever argued with Mr. Flaherty again like that, that you would be discharged?

A Yes.

Q Did you say to Mr. Brower that I didn't argue with Mr. Flaherty?

A Mr. Brower put it in such definitive terms that there was no need to argue with him.

Q You didn't try to defend yourself?

A Right.

Q Right.

A He put it, either you do it or you don't.

Q He sent you to Mr. Levine?

A Right.

Q What did Mr. Levine say to you?

A The same thing Mr. Brower said, in different phrasing.

Q Was it the same Mr. Brower who asked you to leave the Johnson & Murphy Shoe Company and come to work for Florsheim?

A Right.

Q And, the same Mr. Levine who was responsible for the five Pittsburgh stores?

A Yes, sir.

Q Now, other than this incident in June of 1975, you can recall no other incident where you had an argument with Mr. Flaherty?

A Not that I can recall.

Q Can you recall any incidents where you threw boxes, shoe boxes in the shop?

A I threw a couple in the trash.

Q I don't mean in the trash. Threw shoe boxes around, other than in the trash? From one end of the shop to the other?

A No. Not from one end of the store to the other.

Q Threw shoe boxes around other than throwing them in the trash?

A No.

Q No?

A No.

Q Any incident where Mr.--

Anyone ever talk to you about using abusive language in front of customers?

A I never used abusive language in front of customers.

JUDGE NACHMAN: That isn't the question. Did anyone ever talk to you about that?

THE WITNESS: Mr. Brower did say something about it.

Q (By Mr. Dicker) When?

A This was around the time that Mr. Flaherty began working for Florsheim.

Q When was that, approximately?

A October of '74.

Q And, what did Mr. Brower say to you about using abusive language?

A He said, don't use it. It doesn't become the style of the store. He says, you're only cutting yourself down, and the quality of the merchandise you're trying to sell.

Q And, what did you say?

A I told him, I said, I never used it.

Q And, what did he say?

A He said, he had received a phone call off a customer that he had received abusive--that I had used abusive language.

Q Did he ever talk to you after that indicent in October about the use of abusive language?

A No. I tried to explain what had happened at that time in October, when Mr. Flaherty had almost knocked me down, and I asked him to watch himself, and he became very abusive in his language.

Q It was Mr. Flaherty who became abusive, not you?

A It was Mr. Flaherty.

Q Do you know whether or not Mr. Brower warned Mr. Flaherty?

A I have no idea.

Q Do you know a Mr. Fisher?

A Larry Fisher, yes.

Q Did you ever have any argument with Larry Fisher--strike that.

Was Mr. Fisher an employee of Florsheim, at one time?

A Yes.

Q Back in 1974 and '75?

A When I first started for Florsheim, or when I first started for Mr. Brower. Excuse me.

Q In '73?

A In '73, yes.

Q Did you ever have any arguments with Mr. Fisher?

A I believe there was one.

Q What was that about?

A It was some abusive language he'd used against me, very loudly. I protested to Mr. Brower and dropped it right there.

Q Did you use abusive language back to Mr. Fisher?

A No.

Q Did you talk to him in a loud tone of voice?

A Possibly a loud tone of voice.

Q Did Mr. Browerwarn you about that incident?

A No.

Q He did not?

A No.

Q Did you ever push or shove Mr. Fisher against the stacks in which the shoe boxes are piled?

A Not that I can recall.

Q Other than the incident in June, was there any other time when Mr. Brower sent you to see Mr. Levine concerning your conduct in the store?

A June was the only time.

Q Was the incident in August of '75 concerning the sales tickets, was that incident cleared up by the 25th of August, when you signed the card?

A That was cleared up the next day. That was cleared up the following day.

Q Did Mr. Brower send you to see Mr. Levine about that incident?

A No. It was taken care of right there in the store. I was asked to apologize to Mr. Flaherty. I apologized, and Mr. Brower left it drop at that.

Q You did apologize?

A Yes, I did.

Q And, what did Mr. Flaherty say when you apologized?

A I don't recall what his reply was.

Q Was he pleasant or unpleasant?

A Sort of disgusted.

Q Now, going back to the 28th of August, to your day off.

A Yes.

Q You picked up the check, spent about an hour in the Smithfield Street store?

A Right.

Q And, then, you went over to the Fifth Avenue store?

A Yes, after cashing the check.

Q Did you have lunch?

A Later on, I did. After I left the Fifth Avenue Store.

Q And, you arrived at the Fifth Avenue, I think you said, about 2:00 or 2:15?

A No, that was the Fifth Avenue Store.

Q The Fifth Avenue Store or the Smithfield Store?

A I'm sorry. The Smithfield Street Store, I arrived around 2:15.

Q You spent an hour there?

A Approximately an hour. Then I went down to the--

Q Then you went to cash the check.

A Then I went to cash the check. From there, I proceeded to the Fifth Avenue Store.

Q And, when did you arrive there?

A About five minutes later, ten minutes later.

Q So, you left, if you were an hour in Smithfield, it would bring it to approximately 3:15, five or ten minutes to cash the check brings it to around 3:30. So, you arrived in the Fifth Avenue Store about 3:30?

A Approximately, yes, sir.

Q And, how long did you stay there?

A About two hours.

Q Until about 5:30?

A Yes.

Q And, you ate after that?

A I ate after that, yes, sir.

Q Isn't it true that you and Mr. Levine left the Fifth Avnue Store and Mr. Levine said to you, I'm going to lunch, come on, walk me up?

A Right.

Q And, didn't he use the word, "lunch"?

A I don't recall whether he used the word "lunch" or not. I know he was going out to eat and I did walk him out to where he did eat.

Q And, isn't it true that it was shortly after 2 o'clock that this happened and not after 5 o'clock?

A No, it was a little closer to 5 o'clock.

Q On what day of the week was the 27th?

A The 27th was Wednesday.

Q The 28th?

A Thursday.

Q What time do the banks close in Pittsburgh?

A The main offices close at 4:30; the branches usually close around 4:00.

Q Now, you want home on the evening of the 28th, and stayed home the entire evening. Is that right?

A Yes.

Q And, you were home all day the 29th?

A Yes.

Q That was August 29th?

A August 29th.

Q A warm day?

A On the back porch.

Q You were outside on the back porch for a while?

A Sitting on the back porch.

Q Did you go for a walk?

A No, not that I can recall.

Q Did you go out and get a cold drink?

A I had them right there in the house. Soft drink, not hard.

Q Didn't you walk out for a newspaper?

A No, it's delivered right to the house.

Q So, you didn't leave the house that entire day?

A I had no reason to.

Q You didn't leave to go to Cleveland on that day?

A I left to go to Cleveland on the 30th.

Q The 30th. The next day?

A The next day.

Q You're sure of that?

A Saturday morning.

Q How did you go to Cleveland?

A Greyhound Bus.

Q Did you get a ticket?

A I had one.

Q You had one. Do you have any portion of that ticket left?

A I got the ticket one way, going out, and getting a ride back with my cousin. But, when I was in Cleveland, Ohio, I disposed of the ticket. I had no more use for it. Or, my portion of the ticket, I should say.

Q General Counsel's Exhibits 12 and 13. Do you know when they arrived in your home?

A They arrived the day after Labor Day.

Q They arrived the day after Labor Day?

A Yes.

Q Do you have the envelope in which they came?

A That's the only thing I don't have, sir.

Q Do you get mail deliveries in Cleveland on Saturday? I'm sorry, in Pittsburgh?

A Yes.

Q And, you're sure that it didn't arrive on Saturday, the 30th of August?

A My dad brought that in when he picked the mail out of the mail box.

Q Do you live in a private house?

A Yes.

Q Is the mail box down at the end of the driveway, or is the mailbox at the front door?

A It's attached to the front wall, right next to the front door.

Q Does your dad get the mail out every single day?

A Yes.

Q He doesn't forget some days about the mail?

A It's set low enough that you can look right into it.

Q But, he doesn't forget to go out and look for the mail the way my wife does?

A We check every day. We have a slight vandalism problem, there.

Q And, your dad told you that that letter was not deposited in the mail box,--he didn't see the letter in the mail box until Tuesday, September 2nd?

A Right.

Q Other than these conversations you mentioned concerning the Union back in August, did you ever tell any member of management that you were active in the Union?

A No.

Q Did you know who were some of the more active people in the Union?

A I had a rough idea.

Q What was your rough idea?

A It was from the Monroeville Store. I didn't know the exact general--I mean, the actual personnel involved.

Q Did you know Mr. Osselburn and Mr. Macko?

A Yes.

Q Did you know whether they were among the more active Union adherents?

A Not at the time.

Q Do you know whether they had been discharged?

A I know they are still working for the Company.

Q Now, you did attend a Union meeting on the 24th, excuse me, the 4th of September, did you not?

A Yes, sir.

Q Were Mr. Osselburn and Mr. Macko there?

A Yes, sir.

Q Was there any reason why you're sure you didn't leave on Friday, the 29th, rather than Saturday, the 30th, to go to Cleveland.

A There's one thing that does stick that date in my mind. My dad does his shopping on Saturday morning; and, when my mother was well, she did the shopping on Saturday mornings. And, he drove me to the bus station, then went to do his shopping.

Q Was your dad, at that time, employed?

A He was laid off from J & L Steel Mill.

Q And, that was an unusual week, wasn't it, Mr. Bakowski?

You were off on Wednesday. You were off on Thursday. You were off on Friday.

A I started my vacation.

MR. LADOV: Objection, Your Honor. The record doesn't show Mr. Bakowski was off on Wednesday.

JUDGE NACHMAN: It shows quite the contrary. He worked Wednesday.

MR. DICKER: I'm sorry.

Q (By Mr. Dicker) You were off on Thursday, and you were off on Friday and Saturday.

A That started my vacation.

Q O.K. The first day being not the start of your vacation, but your day off.

A No. This was given to me by Mr. Brower to more or less elongate my vacation, by one day.

Q And, your father was, at that point, on lay-off?

A Right.

Q You were home, and your father was home?

A Yes.

Q Now, I'm talking about on Thursday and on Friday.

A Yes.

Q And, your mother was home, also?

A She was home every day, yes. She had very little mobility.

Q She couldn't get up to answer the phone?

A The phone was right next to her.

Q Would she have been able to answer the phone?

A Yes.

JUDGE NACHMAN: Mr. Bakowski, I understood you to say that Thursday is payday?

THE WITNESS: That's the day that, normally, the paychecks do arrive in the store.

JUDGE NACHMAN: Is every Thursday payday?

THE WITNESS: Normally every Thursday. There has been some variation due to some--

JUDGE NACHMAN: The checks may arrive late or something like that?

THE WITNESS: Right.

JUDGE NACHMAN: When your check arrives, what period of time does it cover?

THE WITNESS: Thursday--

JUDGE NACHMAN: Now, you were supposed to get a check on August 28th. Now, what period of time did that cover?

THE WITNESS: That would have been,--that paycheck right there would have paid me for my two weeks vacation, plus the weeks, the 28th's commissions.

JUDGE NACHMAN: What I'm trying to get at. Would I be correct--

THE WITNESS: I'm sorry. The 21st.

JUDGE NACHMAN: Would I be correct to say, and you correct me if I'm wrong, that your work week is from Monday through Saturday, and you're paid the following Thursday for that work. Is that correct?

THE WITNESS: No.

JUDGE NACHMAN: All right, then, what is it?

THE WITNESS: The work week is from Friday until Thursday.

JUDGE NACHMAN: Beginning Friday morning,--

THE WITNESS: Beginning Friday morning until Thursday evening.

JUDGE NACHMAN: Until the close of business on Thursday evening?

THE WITNESS: Yes.

JUDGE NACHMAN: And, when you get your check on Thursday, that covers the whole--

THE WITNESS: That covers the week prior.

JUDGE NACHMAN: The week prior.

Q (By Mr. Dicker) You gave an affidavit to Mr. Levinson of the National Labor Relations Board?

A Yes, sir.

Q That was dated September 25, 1975.

A Yes. sir.

Q Is that the date you signed it?

A Yes, sir.

Q How did it come about that you saw Mr. Levinson?

A Mr. Levinson called me and asked me to come in and give a deposition as to my firing.

Q What did Mr. Levinson say to you?

A The exact words, I can't be sure. Generally, just what I said. I can't recall it to the word.

Q Did he tell you that you had to come in, or did he tell you it was voluntary?

A There was nothing definite about it.

Q How many phone calls did you have from Mr. Levinson before you came down to the NLRB,--strike that.

You did give this affidavit at the NLRB's offices?

A Yes, sir.

Q And, how many conversations did you have with Mr. Levinson before you came down to the NLRB offices?

A I believe it was one.

Q Just one.

JUDGE NACHMAN: It is correct that Mr. Levinson talked to you and, on the basis of the information that you gave him, he wrote out a statement?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: And, when it was over, he asked you to look at it and see if it was correct?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: And, then he asked you to sign it?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: And, you did so?

THE WITNESS: Yes, sir.

Q (By Mr. Dicker) Did you ever have any argument with Mr. Louis Scott?

A Mr. Scott,--not that I can recall.

Q Now, you were a full-time employee at 501 Smithfield at the time you were discharged. Is that right?

A Yes, sir.

Q And, Mr. Foreman was a part-time employee?

A Yes, sir.

Q Mr. Paranzino was a part-time employee?

A I believe so. He had just started that day, the 25th.

Q And, Mr. Flaherty was a full-time employee?

A Yes, sir.

Q And, Mr. Scott was a full-time employee?

A Yes, sir.

MR. DICKER: I have nothing further of this witness.

JUDGE NACHMAN: Any redirect?

MR. LADOV: Very brief, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Bakowski, directing your attention to that Thursday, August 28th, you spoke with Mr. Brower that day?

A Yes, sir.

Q About what time did you speak with him?

A Approximately 2:00, 2:15.

Q Did he mention your discharge to you?

A No.

Q Did you also speak with Mr. Levine that day?

A Yes.

Q Approximately what time?

A It was around 3:00, 3:15, maybe a few minutes after.

JUDGE NACHMAN: Mr. Ladov, hasn't all that been covered on direct?

MR. LADOV: Yes, it has, Your Honor.

JUDGE NACHMAN: Then, what's the purpose of this, if there is any?

MR. LADOV: All right. One purpose I want to get this conversation with Mr. Levine--

JUDGE NACHMAN: When will it get to that?

MR. LADOV: All right.

Q (By Mr. Ladov) Was that conversation in the store?

JUDGE NACHMAN: What conversation?

MR. LADOV: With Mr. Levine at approximately 3:00?

THE WITNESS: It was partially in the store, and I walked out of the store with him to where he was eating.

Q (By Mr. Ladov) Did he mention anything about the discharge

A No.

MR. LADOV: No more questions, Your Honor.

JUDGE NACHMAN: You're excused.

(The witness was excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: May the record show that I am returning to the Board the Xerox copy of the affidavit furnished to me at the conclusion of Mr. Bakowski's testimony.

JUDGE NACHMAN: All right.

Call your next witness.

MR. LADOV: I call Mr. Joseph Bakowski, please.

Whereupon,

JOSEPH BAKOWSKI

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated, please.

DIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Bakowski, would you state your name and address for the record, please?

A Joseph Bakowski, 421 Parklowe, 15210, Pittsburgh.

Q Mr. Bakowski, have you ever been employed by Florsheim Shoe Company?

A Never.

Q By whom are you employed?

A Jones and Laughlin Steel.

Q Is Ronald Bakowski your son?

A Yep.

Q Does he live with you?

A Yeah.

Q At Parklowe Street?

A Yeah.

Q Who else lives there?

A Just me and him, now. After my wife passed away, him and I live together, now.

Q Mr. BAkowski, I show you this calendar, and I'd like to direct your attention to the last week of August, 1975, this week here.

Did you ever receive a phone call from a Mr. Brower that week?

A On the 30th, my wife received a call.

Q Your wife received a call?

A Yes.

Q Were you at home when this call came?

A I wasn't home. I was doing the shopping. And my wife--

Q How did you learn about the call?

A After I came home from shopping, she told me.

Q What did she tell you?

A That Mr. Brower called and wanted Ron to call back immediately. It's urgent. So, I called the store and I--someone answered the phone there, and I told them that Ron was out of town, and to tell Mr. Brower that the only way he can get in touch with him now is Tuesday afternoon. That's when he'll be back.

Q And, this call, what day did this call occur on?

Excuse me, strike that.

What day did your wife tell you that Mr. Brower called?

A Saturday morning, on August the 30th.

Q Did she tell you that Mr. Brower had called that morning?

A Yeah.

Q And, did you call the Florsheim Shoe Store that morning?

A Yes, I called the Smithfield Store.

Q And, where was your son on August 30th, 1975?

A He was gone. He was out of town. I took him out of town, in the morning.

Then, I came home, brought my wife downstairs, and made her breakfast, and I went to do the shopping.

Q Directing your attention to Thursday, August 28th. Was your son, Ron, at home that day?

A Yeah.

Q And, on Friday, August 29th, was your son, Ron, home that day?

A Yeah.

Q Were you home on August 29th?

A Yeah.

Q The whole day?

A The whole day.

Q Did you receive any calls?

A No calls at all.

Q From Mr. Brower?

A No calls from Mr. Brower.

Q On August 28th, did you receive any calls?

A No.

Q On August 29th, did you receive any calls?

A No.

Q When did Ron go on his vacation?

A Saturday morning, August the 30th, in the morning. Then, I came home, and I went upstairs. I dressed my wife and brought her downstairs, because she was paralyzed.

Now, he's looking at me kind of funny, that I dressed my wife. She's paralyzed.

JUDGE NACHMAN: Just give us your testimony.

THE WITNESS: And, I had to dress her and bring her downstairs, and make her breakfast, and then I went shopping. When I come back home, that's when she told me that a phone call come from the store.

Q (By Mr. Ladov) And, that was the day that Ron had left for Cleveland.

A Yeah.

Q How do you know that Ron had left for Cleveland?

A Well, that's where he told me he was going. I don't know where he went. He might have went—I don't know where he went. He's old enough to take care of himself.

MR. LADOV: No more questions, Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: I would ask Mr. Ladov whether or not Mr. Bakowski, Mr. Joseph Bakowski has given the Board any written statements or adopted any statements?

MR. LADOV: He has not.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Bakowski, your son, Ron, he didn't go to work on the 28th of August, did he?

A No.

Q He slept late that morning?

A Yeah.

Q How late?

A Until about 1:00.

Q And, then what did he do?

A Then, he called the store and wanted to know if they had his paycheck in. He asked for Mr. Brower, and Mr. Brower answered the phone. He said the paychecks was in, 'cause I was sittin' right there when he was callin'.

Then he went into town, went into the store, picked his check up. I guass he picked his check up. He didn't get home until after 6:00.

Q And, then, the next morning, Friday, the 29th, did he sleep late again?

A He slept late again.

Q About how late?

A Until about 1:00.

Q Did you sleep late that morning?

A Not me. I never sleep late. I don't have time to sleep late. I had work to do with my wife. I had to be up at 7:30.

Q You were on lay-off at that time?

A I was on lay-off, yeah.

Q And, you had certain duties to perform for your wife, who was then paralyzed?

A Yeah.

Q Any reason during the 29th that you would have left the house?

A The 29th? No.

Q Friday the 29th.

A No.

Q You're sure of that?

A I'm sure of that.

Q Do you take a nap in the afternoon?

A Me?

Q Yes.

A Nope. I was pretty well rested up after 8 months rest.

Q Now, what time did you leave on Saturday, the 30th, to take--

There came time on the morning of Saturday, the 30th, that you and Ron went someplace?

A He got up and I took him into town.

Q About what time did you get up?

A It was about 6 o'clock, 6:30, and then I took him to town. I come back home and I went up and brought my wife down.

Q Where did you drop him off in town?

A At the Greyhound Bus Station.

Q And, then,what did you do?

A I went back home and dressed my wife and brought her downstairs and made her breakfast. Then, I got her in the living room. Then, I went shopping. I went down to the baker's shop and the butcher's shop, and a little bit of shopping at Kroger's and Giant Eagle, and I come home.

MR. DICKER: I have no further questions, Your Honor.

MR. LADOV: No questions, Your Honor. Thank you.

JUDGE NACHMAN: You may step down, Mr. Bakowski.

(The witness was excused.)

JUDGE NACHMAN: Call your next witness, please.

MR. LADOV: I now call Louis Brien, please, to the stand.

Whereupon,

LOUIS BRIEN

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated, please.

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address, please, sir?

A Louis Brien, 1214 Laural Avenue, Deerfield, Illinois.

Q By whom are you presently employed?

A The Florsheim Shoe Company.

Q What is your position with Florsheim Shoes?

A National General Manager.

JUDGE NACHMAN: Don't you have a stipulation on that?

MR. LADOV: I was trying to lay a foundation, Your Honor, to move to question the witness under 611(c).

JUDGE NACHMAN: The foundation is already established by virtue of the complaint and the answer.

MR. LADOV: Fine. May I move to question the witness under Section 611(c)?

JUDGE NACHMAN: All right.

Q (By Mr. Ladov) Mr. Brien, when was the first time that you learned about the employees' organizational activities in the Pittsburgh Stores?

A On September the 2nd, I had a phone call from Mr. Levine at which time he read to me a copy of the letter that he had received from the Union.

Q And, after you spoke with Mr. Levine, did you then contact Attorney Marvin Dicker?

A Yes.

Q On September 8th, 1975, Mr. Brien, did you and your administrative assistant, Mr. Silverhorn, arrive in Pittsburgh, Pennsylvania, and meet with Mr. Dicker on that date?

A Yes, but I'd like to clarify the title. Mr. Silverhorn was not my administrative assistant. He was a supervisor.

Q Mr. Brien, did you also, on September 8th, 1975, meet with Mr. Levine and the individual store managers?

A Yes.

Q The other four store managers?

A That's correct.

Q And, were Mr. Dicker and Mr. Silverhorn present?

A Yes, sir.

Q And, didn't you discuss the Union organizing campaign during these meetings?

A Yes, sir.

Q During these meetings, did Mr. Dicker instruct the managers to keep their eyes and ears open about what was going on?

A Yes, sir.

Q And, did he also instruct the managers to ask the employees what was bothering them?

A Yes, sir.

Q Then, did he instruct the managers that they should advise Mr. Levine of what was discovered?

A Yes, sir.

Q Mr. Brien, on September 9th, 1975, did you, Mr. Levine, and Mr. Silverhorn, go to each of the five stores in the Pittsburgh Area that day?

A Yes, sir.

Q And, after you visited the five stores, did you then leave Pittsburgh and return to Chicago?

A Yes, sir.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: I ask the Board to produce the statement that Mr. Brien gave to the National Labor Relations Board.

I have a copy of the statement. I just want the record to show that, in fact, Mr. Brien, did give a signed affidavit to the National Labor Relations Board.

JUDGE NACHMAN: Do you have a copy of it?

MR. DICKER: I have a copy of it. I just want the record to indicate that it was given to the Board on October 22, 1975. At least it was sworn to on October 22, 1975.

JUDGE NACHMAN: So, you don't need the copy that the General Counsel has in his file?

MR. DICKER: No. I just want the record--I have reasons for wanting to have that established on the record.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Brien, at that September 8th meeting, could you give us in somewhat greater detail what I said to the store managers and Mr. Levine?

A Yes. During the meeting, we invited each store manager and Mr. Levine up to have a consultation at which time we questioned each store manager to find out what they knew about any Union activity in the Pittsburgh Stores.

Q What did each of them tell you?

A Very little to nothing.

Q Did anyone have any knowledge of the Union activity in the stores?

A No.

Q Go ahead.

A Since there was a great deal of lack of information, we instructed each manager to find out what they could, but not to threaten, coerce, or to ask a store manager if they had signed a card.

Q Ask a store manager?

A Or, ask a store employee if they had signed a card, and not to promise anything in return.

Q How did we instruct the store managers to find out what they could about Union activity?

A Just to keep their ears open.

Q Was there any discussion over finding out what complaints or problems the employees had concerning their wages, hours, or working conditions?

A If an employee came up and wanted to discuss the matter with the store manager, they should feel free to do it. The manager should feel free to express his opinions about what was said and feel free to express his opinions about the Union and to answer to the best of their knowledge any questions that the employees had.

Q Was there any discussion concerning eavesdropping or keeping the employees under surveillance?

A No.

Q Was there any question concerning threatening employees with loss of their jobs?

A Just the opposite.

Q Just the opposite?

A There was never any question about that.

Q Did anyone tell the store managers that they could suggest to the employees that they could bargain individually with the Company or form a committee rather than bargain through a Union?

A No.

Q Was there any discussion that day instructing the store managers to interrogate employees concerning their Union activities or membership or other employees Union activity or membership?

A No.

Q Was there any instruction at all given about that?

A The instructions given were not to interrogate the employees.

JUDGE NACHMAN: Mr. Dicker, what's the relevancy of that testimony?

MR. DICKER: I'm just cross examining. I don't know what the relevancy of the first set of questions were. I just want to establish for the record what happened at that meeting. Whatever relevance, I guess I'll find out in due course from the General Counsel.

JUDGE NACHMAN: I assumed you had some purpose in bringing out this testimony.

MR. DICKER: Your Honor, I assume that, somehow or other, General Counsel will argue that Mr. Brien instructed store managers to keep the employees under surveillance, to threaten the employees,—

JUDGE NACHMAN: That hasn't been established, yet.

MR. DICKER: I agree with you, Your Honor.

JUDGE NACHMAN: So, if that testimony comes in, if that is established, it would be through some other testimony. I don't know what it would be.

MR. DICKER: I agree with you, Your Honor, except I thought that was the purpose of the General Counsel's direct.

I'm finished, anyway, at this point.

JUDGE NACHMAN: Just assuming, for the sake of argument, that Mr. Brien gave the instructions that you have developed, he told them not to interrogate, not to coerce; but, the store managers did anyhow,—

MR. DICKER: If they did it anyhow, then that's a different question.

JUDGE NACHMAN: That would be it.

MR. DICKER: I only can take it one step at a time, Your Honor. I've tried to make sure that it's understood that top management didn't give those instructions.

JUDGE NACHMAN: So, this testimony doesn't help much?

MR. DICKER: I agree.

JUDGE NACHMAN: O.K. You're through, then?

MR. DICKER: I'm through, at this time, with Mr. Brien. I may call him subsequently as my own witness.

JUDGE NACHMAN: You have a perfect right to do that.

MR. DICKER: Thank you.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No, Your Honor.

JUDGE NACHMAN: You may step down, Mr. Brien.

(The witness was excused.)

JUDGE NACHMAN: Call your next witness.

MR. LADOV: I call Louis Scott, please.

Whereupon,

LOUIS SCOTT

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

I ask you to answer the questions that are asked of you, and to speak up loud, so that we can all hear you.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address, please?

A Louis Scott, Jr., 201 Center Street, Apartment 2, Pittsburgh, Pennsylvania, 15221.

Q Mr. Scott, were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Would you trace your employment history, please, with Florsheim?

A I started in September of 1971 and was terminated in September, about mid-September of 1975.

Q And, where did you work?

A At the 501 Smithfield Street Store.

Q And, at the time of your hire, what was your position?

A Stockboy.

Q And, at the time of your discharge, what was your position?

A Salesman.

Q You were promoted to a salesman during your tenure with Florsheim?

A Right.

Q At the time of your discharge, what was your rate of pay?

A My rate of pay was a dollar an hour, 5:3:5 commission.

Q Mr. Scott, who was your supervisor at the Smithfield Street Store?

A Mr. B. M. Brower.

Q Mr. Scott, did you ever learn about the employees' effort to organize a Union at Florsheim?

A Yes.

Q Would you describe to the judge the circumstances, how you learned this?

A I learned it from Joe Osselburn over the telephone in the earliar part of August; and, I kept in touch with him, back and forth; and, he sent me applications through the mail to sign cards to join the Union.

Q Did you speak with any other employees regarding the Union?

A Yes, I spoke to Ron Bakowski, Douglas Foreman, James Ball, Arnie McGonigle and Larry, that was our stockboy at that time.

JUDGE NACHMAN: In August of 1975, you worked as a salesman?

THE WITNESS: I was a salesman.

JUDGE NACHMAN: Full-time or part-time?

THE WITNESS: Full-time.

MR. DICKER: I'm sorry. Could I have those names again?

THE WITNESS: Ron Bakowski, Douglas Foreman, James Ball, Arnie McGonigle, Larry, our stock clerk, and Jimmy Schneider.

Q (By Mr. Ladov) And, what did you find out from speaking with these employees?

A I found out that they were interested in the Union and were glad to fill out cards.

Q Did you ever get any authorization cards?

A Yes.

Q How did you get them?

A Through the mail.

Q Who sent them to you?

A Joe Osselburn.

Q Approximately when did you receive these cards?

A In August, about mid-way August, or earlier August.

Q Did you solicit any employees to sign Union authorization cards?

A Yes.

Q Who were these employees?

A James Ball, Arnie McGonigle, James Schneider, Ron Bakowski, Douglas Foreman, and Larry, our stock clerk.

Q Did all of them sign authorization cards?

A Yes.

Q Did you solicit any other employees?

A No.

Q Mr. Scott, is it your testimony that each person you solicited to sign a card, signed a card?

A Yes.

MR. LADOV: I'd like to have this marked as General Counsel's Exhibit No. 16.

(The document, above-referred to was marked as General Counsel's Exhibit No. 16, for identification.)

Q (By Mr. Ladov) Mr. Scott, I show you a copy of what has been marked as General Counsel's Exhibit No. 16. Can you identify it?

A Yes.

Q What is it?

A It's an application card to join the Union, Local #1407.

Q Is that your signature on the card?

A Yes, sir.

Q Is that the date which you executed this card?

A Yes, sir.

Q Did you read that card before you signed it?

A Yes, sir.

Q Did you fill the card out, completely?

A Yes.

JUDGE NACHMAN: All the written material on this card is in your handwriting. Is that correct?

THE WITNESS: It's in my handwriting, yes.

JUDGE NACHMAN: How about the words, 'The Florsheim Shoe Shop'?

THE WITNESS: That's in my handwriting, too.

Q (By Mr. Ladov) And, how did you receive this card?

A Through the mail, from Joe Osselburn.

JUDGE NACHMAN: Did you read the card before you signed it?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: All of it?

THE WITNESS: All of it.

JUDGE NACHMAN: There's a little part over there in small letters over to the left-hand side of your signature. Did you read that?

THE WITNESS: Yes, sir.

MR. LADOV: I offer General Counsel's Exhibit No. 16 into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's Exhibit No. 16 will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 16, was received in evidence.)

Q (By Mr. Ladov) Mr. Scott, did you ever approach Mr. Flaherty about the Union?

A Yes.

Q What did you say to him?

A I asked him, would he like to fill out an application card for the Union; but, he said, no. Then, I dropped it right there.

Q When did this occur?

A This happened, roughly, about mid-August, or earlier August.

Q Did you ever speak with Douglas Foreman?

A Yes.

Q Did you give him a card?

A Yes.

Q Mr. Scott, you stated your supervisor was Mr. Brower?

A Right.

Q Did Mr. Brower ever ask you about the Union?

A Yes.

Q And, when did that occur?

A That occurred in the earlier part of September.

Q 1975?

A 1975.

Q And, where did that occur?

A At the 501 Smithfield Street store, in the back room.

Q Was anyone else present?

A Yes.

Q Who?

A Bill Flaherty.

Q And, what did Mr. Brower ask you?

A He asked me, how did I feel about the Union and how did I feel it would benefit me.

Q And, what did you tell him?

A I told him, as far as benefits and money, it would help. He also asked me, you know, did I sign a card.

Q And, what did you tell him?

A I told him yes.

JUDGE NACHMAN: You told him that you had signed a card?

THE WITNESS: Yes, sir.

[illegible] not fired for U activity? Charge filed by [illegible] complainant

Q (By Mr. Ladov) Did anything else occur during that conversation?

A No.

Q Mr. Scott, did you ever learn of Ronald Bakowski's discharge?

A Yes.

Q When did you learn of his discharge?

A It was the Saturday after Ron started vacation. If I'm not mistaken, it was the day of August 30th.

Q I show you this calendar. What day did you learn that Mr. Bakowski was discharged?

A August 30th.

Q How did you learn that, Mr. Scott?

A Mr. Brower showed me and Douglas Foreman a letter that he had wrote to Ron.

JUDGE NACHMAN: Did he show you the original letter or a copy of that letter?

THE WITNESS: It was the original.

Q (By Mr. Ladov) How do you know it was the original?

A He wrote it that Saturday morning.

JUDGE NACHMAN: Was it written out in long-hand?

THE WITNESS: In long-hand.

JUDGE NACHMAN: It wasn't typewritten?

THE WITNESS: It wasn't typewritten. It was written out in long-hand.

Q (By Mr. Ladov) So, he wrote it that Saturday morning. Did you see him write it?

A I wasn't standing right behind him, but I was waiting on a customer, and I was coming back and forth, you know, waiting on a customer in the store. He was there, writing a letter; and, as soon as he got done, he showed me the letter.

JUDGE NACHMAN: In other words, while you were waiting on customers, you saw him writing something. You didn't know what it was, at that point?

THE WITNESS: Not at that point.

JUDGE NACHMAN: You didn't know what it was?

THE WITNESS: Not at that point. Not until I got done with the customer.

JUDGE NACHMAN: After you had finished with the customer, he called you in and showed you the letter. Right?

THE WITNESS: Right.

Q (By Mr. Ladov) Mr. Scott, did Mr. Brower say anything to you when he showed you the letter?

A He just showed me the letter, and then he asked me my opinion of the letter.

JUDGE NACHMAN: Well, now, did he read the letter to you, or did he give it to you to read?

THE WITNESS: He gave it to me to read, and asked me what did I think about it.

Q (By Mr. Ladov) I show you, Mr. Scott, what has been introduced as General Counsel's Exhibit No. 12. Is that the letter that Mr. Brower showed you on Saturday, August 30th?

A Yes.

Q When did he show you that letter?

A It was in the morning, the earlier part of the day, Saturday, August 30th.

Q And, you read that letter?

A Right.

Q Did he show it to anyone else, Mr. Scott?

A Yes. When he got done showing it to me, he showed it to Douglas.

JUDGE NACHMAN: Did you hear the conversation between Mr. Brower and Mr. Foreman?

THE WITNESS: No, I was standing in the backroom, at first. Then, a customer came in and I went and waited on a customer.

JUDGE NACHMAN: So, you did not hear their conversation?

THE WITNESS: No, not about the letter.

Q (By Mr. Ladov) Did you see him show Mr. Foreman the letter?

A But, I seen him show it to him, yes.

Q All right, Mr. Scott, directing your attention, again, to the last week of August, Thursday, August 28th. Did you ever see Mr. Ronald Bakowski in the Smithfield Store that day?

A Yes.

Q What was your answer?

A Yes.

JUDGE NACHMAN: Speak up louder.

Q (By Mr. Ladov) What time of day did you see Mr. Bakowski in the store?

A In the mid-day, between about one and three, somewhere in that area.

Q Mr. Scott, are you sure that you saw that letter on Saturday, August 30th?

A Yes.

Q How are you so sure?

A Because Douglas Foreman comes in on Saturdays. That's the only day of the week that he worked in the morning; and, I can recall his being in and his seeing the letter that same day that I seen it.

MR. LADOV: No more questions, Your Honor.

Your witness, Mr. Dicker.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: May I call upon the Board to produce any statement that Mr. Scott has given to the Board and/or has adopted?

JUDGE NACHMAN: I'm just offering a suggestion in order to speed things up.

Now I assume that every witness that General Counsel calls, you are going to ask for any statement he may have from the witness?

MR. DICKER: Yes, Your Honor.

JUDGE NACHMAN: All right. I will ask,Mr. Ladov, when you are through with the witness, you have the statement ready to give to Counsel, to speed the proceedings.

MR. DICKER: Now that you mentioned it, Your Honor, we asked for those statements months ago, back in December of 1975. That certainly would have speeded it up.

JUDGE NACHMAN: But, under the rule, you are not entitled to them until after the witness has testified on direct.

MR. DICKER: I think, under the law, I'm entitled to them when I request them.

JUDGE NACHMAN: Well, we just have a difference of opinion about that.

MR. DICKER: Well, we'll eventually allow the Court to decide that.

JUDGE NACHMAN: They generally have the final say.

MR. DICKER: Yes, Your Honor, I agree.

MR. LADOV: I do have all the affidavits ready, Your Honor.

, to speed the proceedings.

JUDGE NACHMAN: I'll go one step further with you. When the Court says, finally says, what is right, it's right, even if it isn't right.

MR. DICKER: I agree. When the Court of last resort says so.

JUDGE NACHMAN: Yes.

MR. DICKER: May we go off the record?

JUDGE NACHMAN: Well, we're on the record, right now.

MR. DICKER: I'll need a few minutes off the record.

JUDGE NACHMAN: Oh,yes. You take the time to examine the statement. How long is that statement?

MR. DICKER: It's three handwritten pages.

JUDGE NACHMAN: All right. Let's be in recess about five minutes.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

You may cross examine.

CROSS EXAMINATION

Q (By Mr. Dicker) Now, Mr. Scott, you had a phone call from Mr. Osselburn in, I believe you said, mid-August, 1975?

A Yes, sir. Earlier or the mid-part of August.

Q And, that telephone conversation occurred when you were in the store?

A No.

Q No? He called you at home?

A Yes.

JUDGE NACHMAN: Don't shake your head. Answer out, please.

Did the conversation take place in the store?

THE WITNESS: No.

Q (By Mr. Dicker) It occurred at home?

A At home, I believe.

Q You were at home?

A No, that did occur in the store.

Q In the store. You were called while you were at work?

A Right.

Q During normal working hours?

A It was after hours. After the store had closed, he told me to call him, you know, after I got home.

Q After the store closed,--Oh, I see.

Mr. Osselburn called you in the store and told you to call him when you got home?

A When I got home. Right.

Q And, you called him back at home?

A Right.

Q That evening?

A That evening.

Q All right. Did Mr. Osselburn ask you if you were interested in joining the Union?

A Right.

Q And, did he say anything else?

A No, sir.

Q Did he try to give you reasons why you should join the Union?

A Not then. Not on that phone call.

Q Not on that phone call. And, you said to him that you were interested?

A I told him I was interested.

Q Then, what did he say?

A Then he said to, you know, to think about it, and he would call me back.

Q O.K.

A On a later day.

Q And, did he call you back on a later day?

A Yes.

Q About how long after that phone call in August?

A That was about two days afterward.

Q About two days later. He called you, where, home or in the store?

A It was at home.

Q At home. And, tell us what he said, then.

A Then he explained to me about the benefits and everything that, you know, would protect us, as far as the Union.

JUDGE NACHMAN: I can't hear you, Mr. Scott.

THE WITNESS: He spoke to us about our benefits,--

Q (By Mr. Dicker) Us? Did you say 'us', or you?

A He spoke to me about our benefits, the benefits we would have in the Union, and then how the Union would help us, you know, as far as getting these benefits.

Q And, what did you say?

A I told him I was for it and to, you know, mail me some applications; and, I would talk to some of the other guys here in town, and get their opinions.

Q So, you told him to send you the applications and you would talk to the other employees about the Union?

A Right.

Q Were you very enthused about the Union?

A Right.

Q This one conversation made you very enthused about the Union?

A Not the one conversation.

Q Well, what other conversation did you have?

A It was the application plus talking with him that made me enthused.

Q And the application is the document in evidence as General Counsel's Exhibit No. 16?

A Yes.

Q So, that application, General Counsel's Exhibit No. 16 plus your one conversation with Mr. Osselburn made you enthusiastic about the Union?

A Yes.

Q And, you asked him to mail you some applications?

A Yes.

Q Did you tell him how many you wanted?

A No.

Q How many did he mail you. Do you remember?

A I can't remember.

Q More than one?

A It was more than one.

Q Did he mail you more than one because you told him you would talk to other employees?

A Yes.

Q And, after you received the applications,--strike that.

Did you, when you got the applications, did you get anything else concerning the Union? Any other literature?

A Yes.

Q What did you get?

A I got in some agreements.

Q Collective bargaining agreements?

A Right.

Q Did you read them?

A Yes.

Q Did you understand them?

A Yes.

MR. DICKER: I'm glad somebody does.

JUDGE NACHMAN: Maybe it was one that the lawyers didn't write.

MR. DICKER: That could be, too.

Q (By Mr. Dicker) And, you also read the application form, and you understood that?

A Yes.

Q O.K. Now, when you said you handed out applications to Mr. McGonigle, Mr. Foreman, Mr. Bakowski, Mr. Ball, Mr. Schneider and to Larry, the stock clerk. All of them,--

A Right.

Q Did you do this at one time, or was it at various times?

A I did it at various times.

Q Did you do it while they were at work, or did you do it at their homes?

A At work.

Q At work?

A Right.

Q Now, Mr. Schneider, Mr. McGonigle, and Mr. Ball all worked, then, at the 200 Fifth Avenue Store?

A Yes.

Q And, Mr. Foreman and Larry, and Mr. Bakowski all worked at the 501 Smithfield Street store?

A Yes.

Q I assume you gave the three gentlemen who worked at the 501 Smithfield Street store their applications while you were at work with them at that store?

A Right.

Q And, you walked over at sometime during the day to the 200 Fifth Avenue Store and gave the applications to Schneider, McGonigle and Ball?

A Right.

Q All right, now, did you stand around and--

Let's take the people at the 200 Fifth Avenue Store, first.

Did you stand around while Mr. Schneider made out his application form?

A Yes.

Q Was the store busy?

A No.

Q He made it out and he signed it?

A I mailed mine at the same time.

Q All three of you at the same time?

A Two.

Q Two. Who were the two of you?

A Me and Jimmy Schneider made ours at the same time.

Q Oh, and you made yours, not at 501 Smithfield, but at 200 Fifth Avenue?

A No, I made it at 501, but I mailed it with his.

Q I see. But, when Mr. Schneider filled out his form, were you present?

A Yes.

Q Did he read it?

A Yes.

Q Did he have any questions about it?

A Yes, but he spoke with Joe Osselburn and got his answers.

Q Oh, I see. He called Mr. Osselburn, and he asked Mr. Osselburn questions?

A Right.

Q While you were present?

A Right.

Q And, then he signed it and gave it to you?

A Right.

Q How long did that whole thing take?

A It only took about 5 or 10 minutes.

Q Five or ten minutes for him to make out the form, ask you the questions, not get answers, and then call Mr. Osselburn and get the answers from him?

A A few. Not all, but a few.

Q And, that whole thing took five or ten minutes?

A Right.

Q Where was Mr. Levine at that time, do you know?

A He was out.

Q And, what about Mr. McGonigle. Did you give Mr. McGonigle an application?

A Yes.

Q In the 200 Fifth Avenue Store?

A Yes.

Q Were you present when he made it out?

A No.

Q No. So, you don't know whether or not he read it?

A No.

Q And, he gave it back to you subsequently?

A Yes.

Q Now, what about Mr. Ball. You also gave him an application at the 200 Fifth Avenue Store?

A Yes.

Q Were you present when he read it?

A No.

Q Were you present when he signed it?

A No.

Q Now, what about Mr. Bakowski? Were you—you gave it to him at 501 Smithfield?

A Yes.

Q Were you present when he made it out?

A No.

Q What about Mr. Foreman? You gave it to him at 501 Smithfield?

A Yes.

Q Were you present when he read it?

A No.

Q Were you present when he signed it?

A No.

Q Now, Larry, I believe it's Larry Paranzino. Did you give him an application?

A Yes.

Q Were you present when he signed it?

A No.

Q They all returned them to you at subsequent dates?

A Right.

Q And then, you mailed them, where?

A I mailed them in the mailbox right outside.

Q To whom did you mail them?

A I mailed them to the Union. They went straight in.

Q To the Union and not to Mr. Osselburn?

A No.

Q Did Mr. Osselburn instruct you to send them directly to the Union?

A Right. Just to mail them.

Q He did that when you spoke with him on the phone the second time?

A Right.

Q Now, you worked at 501 Smithfield for, how long?

A I can't remember, but I worked in both stores for four years.

Q And, in the course of that time, did you work with Mr. Bakowski?

A Yes.

Q Did you ever have any fights or disagreements with him?

A Yes.

Q What were they about?

A I had one little argument with him, because him and Mr. Flaherty were arguing, and Mr. Brower had went on vacation, and we were the only three there, and I was the only one there to really stop them; so, I argued with Ron a little bit just to explain to him not to constantly argue and bicker at each other, him and Bill.

Q Well, were he and Mr. Flaherty constantly arguing and bickering at each other?

A Yes.

Q Frequent arguments in the store?

A Yes.

Q Did you ever have any arguments other than this one argument with Mr. Bakowski?

A No.

Q Do you ever remember hearing Mr. Brower say anything to Mr. Bakowski about his arguing with Mr. Flaherty?

A Yes.

Q How often did you hear Mr. Brower say anything to Mr. Bakowski about the arguing?

A Frequently.

Q Frequently. Did Mr. Bakowski ever argue with a Mr. Fisher?

A I don't know.

Q You don't know?

A No.

Q Now, you say that in early September, 1975, you had a conversation with Mr. Brower concerning the Union?

A Yes.

Q And, what did you say?

A I told him that I was for it.

Q And, then he asked you how it would benefit you?

A Yes.

Q And, what did you tell him then?

A I told him that the benefits sounded good, and that the money was good.

Q Did Mr. Brower then talk to you about what his view of the Union was?

A He tried telling me that the Union wasn't good, you know, for Florsheim, for our store.

JUDGE NACHMAN: That the Union wasn't good for what?

THE WITNESS: For our store, you know, for Florsheim.

Q (By Mr. Dicker) Did he tell you why?

A No. I went out to a customer.

Q Now, did he ask you whether or not you had signed a card?

A Yes.

Q Are you sure of that?

A Yes.

Q And, he did ask you whether you were in favor of the Union?

A Yes.

Q Are you sure he asked you whether or not you had signed the card?

A Positive.

Q Positive?

A Yes.

Q Do you remember Mr. David Levinson of the NLRB?

A Yes.

Q Did you come down to the NLRB offices and sign an affidavit?

A Yes.

Q Did you discuss with Mr. Levinson the various factors about your employment?

A Yes.

Q And, afterwards, did Mr. Levinson write down what you said?

A No, not Mr. Levinson.

Q Not Mr. Levinson? Did someone at the NLRB write down what you said?

A Right.

Q Do you know who it was?

A I don't know the gentleman's name.

Q Was it Mr. Joyce?

A I can't remember.

Q You can't remember. And, did you read that document after it was written out?

A After it was written out, yes.

Q Was it accurate?

A Yes.

Q And, did you sign it?

A Yes.

Q And, did you swear to it?

A Yes.

Q Let me show you this document and ask you whether or not this is the document which you signed?

A Yes.

Q Now, let me ask you again whether or not Mr. Brower asked you whether or not you had signed a Union card?

A Yes.

Q He did?

A Yes.

Q I ask you to read this paragraph that's in the middle of page two of that affidavit.

JUDGE NACHMAN: To yourself.

MR. DICKER: To yourself.

Q (By Mr. Dicker) Do you see which paragraph I'm referring to, Mr. Scott? The middle paragraph.

A Yes, the middle paragraph.

Q Now, does the paragraph to which I referred you, sir, refer to your conversation with Mr. Brower about--strike that.

Does the paragraph to which I referred you, sir, talk about the conversation you had with Mr. Brower in the beginning of September, about Union Activity?

A Yes.

Q Is there anywhere in that paragraph a reference to Mr. Brower asking you about whether you had signed a Union card?

A Yes.

Q Yes. Would you read that to me?

JUDGE NACHMAN: Read it out loud.

THE WITNESS: In late August or early September, Mr. Brien, from Florsheim Headquarters in Chicago and Mr. Silverhorn, theRegional Manager, came to the Florsheim Shoe Shop, 501 Smithfield Street Store, and talked to Mr. Brower.

A few days earlier, Mr. Brower called me into the back room and asked me what I felt about the Union. I said I was for it. He asked why I was for it. I said, for the money. He tried to persuade me that having a Union would not be good for us. I had to leave to wait on a customer.

He spoke to Douglas Foreman right afterward.

JUDGE NACHMAN: That doesn't say anything about his asking you whether you had signed a Union card?

THE WITNESS: No.

Q (By Mr. Dicker) Did he ask you if you signed a Union card?

A He had asked me.

Q You didn't put it in the affidavit you gave to the Board in September of 1975?

A No.

Q Didn't you remember it then?

A No.

Q Do you remember it now?

A Yes.

Q You remember it now, but you didn't remember it then?

A I remembered it,—

I didn't remember it at the time.

Q How long did you spend with the representative of the National Labor Relations Board, talking about it?

A I can't remember, approximately, but it wasn't too long.

Q A couple of hours?

A A couple of hours, or an hour and a half.

Q And, you didn't remember it, then?

A I didn't remember it, then.

Q You remember it now?

A Yes.

Q Now, on August 30th, you said you learned of the discharge of Mr. Bakowski?

A Would you repeat that, sir?

Q On August 30th, you learned of the discharge of Mr. Bakowski?

A Yes.

Q Other than reading the letter which is in evidence as General Counsel's Exhibit No. 12, was there any other discussion with Mr. Brower as to the discharge of Mr. Bakowski?

A No.

Q Are you sure?

A Positive. The only other thing was Mr. Brower had tried calling Ron, and Ron wasn't home; and, Mr. Bakowski had returned Mr. Brower's call, and I answered the phone.

Q You answered the phone?

A Right.

JUDGE NACHMAN: When you say Mr. Bakowski had returned the call, do you mean the salesman or his father?

THE WITNESS: His father.

Q (By Mr. Dicker) Did Mr. Brower also tell you in words or substance on that day that he thought that Mr. Bakowski was a disruptive influence in the store?

A I can't remember.

Q Were you surprised that Mr. Bakowski was discharged?

A Yes.

Q Had not Mr. Bakowski had several arguments in the store during the past year or so?

A Yes.

Q Do you remember an incident with Mr. Bakowski throwing boxes?

A No.

Q Do you remember an incident with Mr. Bakowski pushing Mr. Fisher up against the wall?

A No.

Q Now, the letter in front of you, General Counsel's Exhibit No. 12, are you sure it was the original of the letter you saw, and not a carbon copy?

A Yes.

MR. DICKER: I have no further questions of this witness.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No more questions, Your Honor.

JUDGE NACHMAN: You may step down, sir.

(The witness was excused.)

JUDGE NACHMAN: Off the record.

(Discussion held off the record.)

JUDGE NACHMAN: On the record.

MR. DICKER: May the record show that I'm returning the affidavit of Mr. Scott which was supplied to me by Mr. Ladov at the conclusion of Mr. Scott's testimony.

JUDGE NACHMAN: Off the record.

(Discussion held off the record.)

JUDGE NACHMAN: On the record.

Call your next witness, Mr. Ladov.

MR. LADOV: I'd like to call James Ball to the stand, please.

Whereupon,

JAMES P. BALL

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address, please?

A James B. Ball, 1028 Rosanne Avenue, Pittsburgh, Pennsylvania, 15216.

JUDGE NACHMAN: Try to speak a little louder, please?

THE WITNESS: O.K.

Q (By Mr. Ladov) Mr. Ball, were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Would you describe your employment history with Florsheim, please?

A I started to work for Florsheim back in '74. I worked approximately a year and a half. I started out the first two weeks as a stock clerk, and then I was promoted to a part-time salesman. I was discharged, I think it was the 13th or the 18th.

Q Of what month?

A It must have been August, or was it later? No, August is when I signed the card. It was the same time everybody else was discharged. I don't know the date.

Q Mr. Ball, what store did you work at?

A I worked at the 200 Fifth Avenue Store, and then I was transferred up to the Smithfield Street store, just for a little while, though, whenever they needed me; and, then I was back down at 200, permanently.

JUDGE NACHMAN: The last year or so, you worked part-time?

THE WITNESS: The last year, I worked part-time at 200 Fifth Avenue.

Q (By Mr. Ladov) And, when you were hired, were you hired as a part-time employee?

A Yes, I was.

Q Mr. Ball, are you presently engaged in a full-time position, somewhere?

A Well, presently, I have a full-time job selling cars at McBee, MG in Heidelberg, and I'm attending college, at Community College, South Campus, full-time, also.

Q Who was your supervisor at the Fifth Avenue Store?

A Mr. Levine.

Q Mr. Ball, did you ever learn about the employees' efforts to organize a Union?

A Yes, I did.

Q Would you describe for the judge how you learned about it?

A Well, I heard a few things about it and then, one day, Jimmy Schneider and, I think, Bucky came down from the store,--

Q Who is Bucky?

A Louis Scott. He came down to the store and he gave Jimmy some applications and that, while he was delivering some shoes down at the store. And, then, he told me about it. He told me about the benefits and that, and it was, you know, worth more money and that, and I realized that, to me, I thought it was worth, you know, for the money, so I signed it.

MR. LADOV: I'd like this marked as General Counsel's Exhibit No. 17, please?

(The document, above-referred to was marked as General Counsel's Exhibit No. 17, for identification.)

Q (By Mr. Ladov) Mr. Ball, I show you what has been marked as General Counsel's Exhibit No. 17. Can you identify that?

A Yeah, it's the application that I wrote, I read, filled out and signed.

Q Is that your signature?

A Yes, it is.

Q Is that the date on which you signed the card?

A Yes, it is.

Q Did you read the card before signing it?

A Yes, I did.

Q The whole card?

A Yes, I did.

Q And, did you fill in all the lettering, words, and numbers on the card?

A Yes, I did.

JUDGE NACHMAN: Now, there's a legend written in handwriting at the top of the card. Is that a part of the exhibit?

MR. LADOV: No.

JUDGE NACHMAN: All right.

THE WITNESS: I didn't read that, anyhow, that little--

Q (By Mr. Ladov) Mr. Ball, what then did you do after you executed the card?

A I signed it and I gave it back to Jimmy Schneidar.

MR. LADOV: I offer General Counsel's Exhibit No. 17 into evidence.

JUDGE NACHMAN: Now, did you read the entire card before signing it?

THE WITNESS: Yes, I did. The parts that I filled out.

JUDGE NACHMAN: Now, off to the left of your signature. Look at the original. Did you read that?

THE WITNESS: No. Huh uh. That little square right here?

JUDGE NACHMAN: Yes.

THE WITNESS: No, I didn't think it was of any importance.

MR. LADOV: I offer General Counsel's Exhibit No. 17 into evidence.

MR. DICKER: May I have one question on Voir Dire?

JUDGE NACHMAN: All right.

VOIR DIRE EXAMINATION

Q (By Mr. Dicker) The legend on the top, "Type an Alpha list of these apps for Gary B". Was that on the card when you signed it?

A I can't remember. I really don't know.

JUDGE NACHMAN: The General Counsel says that is not part of the exhibit.

MR. DICKER: I have no objection, Your Honor.

END OF VOIR DIRE EXAMINATION

JUDGE NACHMAN: All right. General Counsel's Exhibit No. 17 will be received.

(The document, heretofore marked as General Counsel's Exhibit No. 17, was received in evidence.)

Q (By Mr. Ladov) Mr. Ball, when you were given this card, what was told to you about the purpose of this card?

A They said it was just a--

MR. DICKER: If anything.

Q (By Mr. Ladov) If anything.

A Jimmy just explained to me that they were trying to form a Union and that it would benefit us, and we'd have, you know, we'd have vacations and there'd be hospitalization, and there would be a little more money, which they weren't getting paid any money, anyhow. That's basically about all. Just benefits.

Q Mr. Ball, let's deal with your discharge. How did you learn about your discharge?

A Just out of a clear blue sky, Mr. Levine came up to me and said that they were making some kind of new policy that no part-time help will be in the Pittsburgh Area, at all; so, he has to fire all the part-time help and go to full-time.

Q Were you offered a full-time job at this time?

A Yeah. He did ask me if I wanted to work.

Q And, what was your response?

A Naturally, I couldn't. I was going to college, and I couldn't do it.

JUDGE NACHMAN: Well, the question is, what did you tell him?

THE WITNESS: I said, no, I cannot accept it because--

JUDGE NACHMAN: You were not interested in a full-time job. Is that what you told him?

THE WITNESS: Right, because I was in college.

Q (By Mr. Ladov) Mr. Ball, had you ever told Mr. Levine that you were going to college prior to your discharge?

A Yes, Mr. Levine knew I was in college.

Q Mr. Ball, had you ever heard, prior to your discharge, about the Company's policy of eliminating part-time employees?

A No, I didn't.

Q When was the first time you heard of that?

A Mr. Levine came up to me and discharged me, that day. That was the first time I heard of it.

MR. LADOV: I have no more questions, Your Honor.

MR. DICKER: May I ask the General Counsel to produce--

JUDGE NACHMAN: Do you have the statement ready?

MR. LADOV: I have no statement from Mr. Ball.

MR. DICKER: Either signed or adopted?

JUDGE NACHMAN: He has no statement of any kind.

MR. LADOV: None. No statement of any kind, no.

Your Honor, has General Counsel's Exhibit No. 17 been accepted into evidence?

JUDGE NACHMAN: It has been received.

MR. LADOV: Thank you.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Ball, pasently you have a full-time selling job at P & G, you said?

A No, McBee, MG, selling cars.

Q You're also attending college full-time?

A Yes, I am.

JUDGE NACHMAN: He didn't say full-time.

THE WITNESS: Yes, I did.

Q (By Mr. Dicker) Let's get it clear. You have a full-time job selling automobiles?

A I'm a full-time salesman and a full-time student.

Q You're a full-time student?

A Right.

Q You carry a full 16 or 18 credits?

A Sixteen credits, right.

Q And, you work a 40-hour week?

A Probably 46.

Q How long have you held that job as an automobile salesman?

A A month.

Q Now, Mr. Schneider approached you in the middle or early part of August, 1975 about the Union?

A Right.

Q Where was that? In the 200 Fifth Avenue Store?

A Pardon me?

Q Where was that, in the 200 Fifth Avenue Store?

A That's where it was, yes.

Q All right. And, he and you spoke about the Union?

A Me and Jimmy, yes.

Q And, he then gave you the card that is in evidence as General Counsel's Exhibit No. 17?

A Right.

Q And, you filled out the card and signed it?

A Right, in his presence.

Q I don't have to get into what you did or didn't read. That's already in direct.

Did you get along well with Mr. Lavine?

A Very well.

Q And, at the time,—

I have no further questions of this witness.

JUDGE NACHMAN: Do you have any redirect?

MR. DICKER: Wait a minute. I'm sorry.
I'm sorry. Nothing further.

JUDGE NACHMAN: Nothing further?

MR. DICKER: No.

MR. LADOV: No.

JUDGE NACHMAN: All right, you're excused.

(The witness was excused.)

JUDGE NACHMAN: I don't think we can take another witness by 5:30. I will adjourn the day. Is there any reason why we can't start earlier tomorrow?

MR. LADOV: The only reason is, Your Honor, I told everyone 10:00 o'clock tomorrow. Some of them have left already.

MR. DICKER: We could be here a little earlier on the off-hand chance that they would be here.

JUDGE NACHMAN: Well, you've got some witnesses here that you could use, couldn't you?

MR. LADOV: Yes, we could start earlier.

JUDGE NACHMAN: All right. Do you want to start at 9:00 o'clock?

MR. DICKER: When you say nine, we may have a little bit of a problem. Could you make it about 9:15?

JUDGE NACHMAN: All right. 9:15.

MR. LADOV: It will be all right. Your Honor. Now, my witnesses, some of them have to come in; but, that's not any problem.

MR. DICKER: Well, if they're not in here --

JUDGE NACHMAN: Now, are there any of these witnesses who can't be here at 9:15?

(No response.)

MR. LADOV: I'm sorry, Your Honor. We'll be here at 9:15.

JUDGE NACHMAN: I'll be ready for you any time after 8:00 o'clock.

MR. DICKER: Your Honor, maybe I ought to make the application that I discussed.

JUDGE NACHMAN: All right.

MR. DICKER: During a few of the breaks, Your Honor, I received a phone call from my partner, Howard Leichenstein, in New York City, indicating that Judge Stewart, Charles E. Stewart, Jr., of the United States District Court, Sub-District of New York, is planning to schedule a hearing concerning the disqualification of another law firm whose name I don't think I have to spread on this record, in a matter which I've been involved in. Judge Stewart had indicated that he wants all Counsel and/or principals who participated in negotiations between the Local Union in New York City and the multi-employer association since, at least, 1960, to appear. Initially, the Judge wanted it on a Thursday, but he agreed to hold the hearing on Friday, instead. That was the direction of the Court given to my partner. The only member of my firm who has that longevity with this particular client is myself. Mr. Burtney Zong, who did have it, passed away several years ago, as did the former executive vice president of the bargaining association, so that the present executive vice president of the bargaining association does not have that longevity.

Not knowing how long this hearing will take, my partner did indicate to the Judge that he would educe me without first calling here, Your Honor, on Friday. The hearing is scheduled to start at 11:00 a.m. in the U.S. District Court House in the Seventh District.

I don't know whether or not we will finish this case tomorrow afternoon, and I do make application to conclude the hearing on Thursday afternoon, and to temporarily suspend it, and reconvene at some early date, so that I could fulfill that committment.

JUDGE NACHMAN: I understand that the General Counsel, he expects to conclude his case before we adjourn tomorrow.

MR. LADOV: Yes, Your Honor.

JUDGE NACHMAN: I understood you to say that there was a possibility, that you couldn't make up your mind, at this time, what you were going to do, but it's entirely possible, at the end of General Counsel's case, you might not wish to offer any evidence.

MR. DICKER: That possibility still exists, Your Honor. There are some decisions I'm going to have to make, I think, only at the conclusion of the General Counsel's case; and, the risk of doing that, as y[illegible], unless I'm absolutely certain that General Counsel [illegible] not made out a prima facia case, and that happens, I must say, very rarely, or has happened on at least one occasion, and the risk of not putting on a direct case, a substantial possibility exists as a possibility and not probability.

JUDGE NACHMAN: Well, what days or dates can we resume? I feel myself compelled to permit you to give the command performance that the Federal Judge has ordered.

That means that we can't proceed on Friday, but I will work late, very late,--

MR. DICKER: I've got to get a plane out of here Thursday evening.

JUDGE NACHMAN: Tomorrow?

MR. DICKER: Yes, sir.

The last flight out is 8:00 o'clock.

JUDGE NACHMAN: The last flight out is 8:00 o'clock?

MR. DICKER: The last flight out is, I'm sorry, it's at 9:15 flight that does get into LaGuardia at 10:15. That's the last flight out.

The flight before that is 8:00 o'clock, and it gets in at 9:03.

JUDGE NACHMAN: All right, I'm going to do this. We will sit tomorrow until 6:30 p.m., or such prior time as the General Counsel needs to conclude his case.

I'll ask you to have available for me, at that time, both Counsel, what you consider as alternative or acceptable dates for the resumption of the hearing.

I'll also ask you, Mr. Ladov, to find out from the Regional Director what other cases may be scheduled in this Region at the time we have in mind for resumption.

MR. LADOV: Are we talking very soon next week, Your Honor?

JUDGE NACHMAN: Well, I want to find out. In other words, you make me a list of cases that are going to proceed in this Region during the month of March; then we'll see how we concur, because I'm quite certain that my office, if I have to return here to finish this, they'll want me to take something else. There might be a hearing in this Region.

MR. LADOV: We're on every day, Your Honor. I will get that list for you.

JUDGE NACHMAN: All right, we will be in recess, then until tomorrow morning at 9:15.

MR. LADOV: Your Honor, then we will not be hearing any testimony on Friday?

JUDGE NACHMAN: No. We will adjourn at 6:30, approximately, tomorrow, or at such earlier time as you may finish your case. If you finish at 4:00 o'clock, that will be it.

MR. LADOV: Thank you.

JUDGE NACHMAN: All right, then, gentlemen. We will adjourn until tomorrow morning at 9:15 a.m.

Off the record.

(Whereupon, at 5:20 p.m., the hearing in the above matter was adjourned to reconvene at 9:15 a.m., Thursday, March 4th, 1976, in the same place, Hearing Room #1.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTH REGION

In the matter of: THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA, AND THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA and RETAIL STORE EMPLOYEES UNION LOCAL 1407 as chartered by RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO	Case number 6-CA-8591

National Labor Relations Board,
Hearing Room #2,
Porter Building,
601 Grant Street,
Pittsburgh, PA 15219.
March 4, 1976

Met pursuant to adjournment at 9:15 o'clock a.m.

BEFORE:

HONORABLE JOSEPH I. NACHMAN, ADMINISTRATIVE LAW JUDGE.

APPEARANCES:

MARVIN DICKER, Esq., Proskauer, Rose, Goetz & Mendelsohn, 300 Park Avenue, New York, New York 10022, appearing on behalf of the Respondent.

E. DONALD LADOV, Esq., and AMY S. KRIEGER, Esq., 601 Grant Street, 10th Floor, Porter Building, Pittsburgh, PA 15219, appearing on behalf of the General Counsel.

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PROCEEDINGS

JUDGE NACHMAN: On the record.

Call your next witness, Mr. Ladov.

MR. LADOV: At this time I call Douglas Foreman, please.

Whereupon,

DOUGLAS FOREMAN

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address?

A Douglas Foreman, 3251 Arlington Avenue.

Q Mr. Foreman, were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Would you please trace your employment history?

A I started in October of 1974, I was terminated in September, September 18th, 1975.

Q When you began during your employment with Florsheim what was your job?

A I started as a stock clerk, I worked the stock clerk's job for about six months and I was promoted to a salesman.

Q Were you hired as a part-time or full-time employee?

A Part-time.

Q During your approximately a year of employment at Florsheim, did you continue to work as a part-time employee?

A. Yes, I did.

Q What was your schedule?

A. Two days a week I worked from five thirty to nine and all day Saturday, from nine thirty to five.

Q What store did you work at?

A. 501 Smithfield.

Q What was your rate of pay?

A. One dollar an hour plus 5, 3 and 5.

Q That's rate of commission?

A. Right.

Q Who was your immediate supervisor?

A. Mr. Brown.

Q Mr. Foreman, did you ever learn about the employees efforts to organize a union at Florsheim Shoes?

A. Yes, I did.

Q Will you please describe the circumstances of how you learned this?

A. Right, Louis Scott approached me on the sales floor and asked me did I want to participate in a union. I told him yes, I did.

Q When did this conversation take place?

A. This was August 25th.

Q What did Mr. Scott say to you?

A He just explained basically what the union was about and what we would be able to get out of the union.

Q Did he give you an authorizationcard at this time?

A Yes.

Q Did you fill it out?

A I took the card home and I lost it, so when I came back to work the following Thursday, he gave me another card.

JUDGE NACHMAN: The first card he gave you, was that blank or did it have anything filled in on it?

THE WITNESS: Nothing was filled in.

Q (By Mr. Ladov) So you have testified that when you came back the next Thursday, did you ask Mr. Scott for another card?

A. Yes, I did.

Q Did he give you one?

A Yes, he did.

Q What then did you do?

A I took thecard to the men's room and filled it out.

Q Then what did you do with it?

A Returned it to Mr. Scott.

MR. LADOV: I would like this marked as General Counsel's exhibit number eighteen.

(The document above-referred to

was marked General Counsel's exhibit No. 18 for identification.)

Q (By Mr. Ladov) Mr. Foreman, you have there what has been marked as General Counsel's exhibit number eighteen, can you identify that?

A Yes, this is the card that I filled out for the union.

Q Can you identify the signature?

A Yes, I can.

Q Is that yours?

A Yes, it is.

Q And the date on the card, is that the date you signed the card?

A Yes, it is.

Q Did you read the card before you signed it?

A Yes, I did.

Q Is all the writing on the card yours?

A All except the Florsheim Shoe Company.

JUDGE NACHMAN: Was that on there when you got it or did somebody put that on later?

THE WITNESS: I think Mr. Scott put it on, I'm not sure.

JUDGE NACHMAN: Before he gave it to you or after you signed it?

THE WITNESS: Before, it was on before.

JUDGE NACHMAN: Did you read this card before you signed it?

THE WITNESS: Yes, I did.

JUDGE NACHMAN: All of it?

THE WITNESS: All of it.

JUDGE NACHMAN: NOw, there is a little legend over to the left of your signature in small type, did you read that?

THE WITNESS: I also read that.

MR. LADOV: I offer General Counsel's exhibit number eighteen into evidence.

MR. DICKER: I have no objection to General Counsel's eighteen, Your honor, except I notice on all the cards there is some writing on the back of them, which was put on subsequently and I don't have copies of that writing on the back. I don't know whether or not it will be significant, but I would like to be able--

JUDGE NACHMAN: I would like to ask Mr. Ladov, do you consider that handwritten material on the back of these as part of the exhibit or will I give it consideration when I consider the case?

MR. LADOV: Yes, Your Honor, I will have to copy all of the backs of the cards.

JUDGE NACHMAN: You will have to make that available to counsel. I hope you make them available to me.

MR. LADOV: I certainly will.

JUDGE NACHMAN: What is going to happen, they are going to be bound in a folder and according to my past experience, I will have to stand on my head to read it.

MR. LADOV: I offer General Counsel's exhibit number eighteen into evidence.

JUDGE NACHMAN: All right, eighteen will be received.

(The document heretofore marked General Counsel's exhibit No. 18 was received into evidence.)

Q (By Mr. Ladov) You have stated Mr. Brower was your immediate supervisor at the Smithfield Street Store?

A Yes, he was.

Q Did Mr. Brower ever ask you about the union?

A Yes, he did.

Q When did he ask you about the union?

A I can't give you the exact date because I don't remember.

JUDGE NACHMAN: Was it before or after you signed the card?

THE WITNESS: It was after.

JUDGE NACHMAN: Can you fix about how long after this?

THE WITNESS: This was about a week after.

Q (By Mr. Ladov) Would you relate that conversation to the Judge, please?

A He just called me to his office and asked me why I was out participating in the union, what could I get out of it and I told him.

Q What did you tell him?

A I told him it was for the men, that I really couldn't get the benefits that all the other full-time guys were getting because I was part-time and I was in it for the money.

Q Did Mr. Brower make any other remarks?

A He also asked me why did I think the stock clerk signed for the unio n, that he couldn't benefit at all from it.

Q Did Mr. Brower ask you if you had signed a union card?

MR. DICKER: Objection.

JUDGE NACHMAN: This is your witness.

Did Mr. Brower make any reference to a union card when he was talking to you?

THE WITNESS: Yes, he did.

JUDGE NACHMAN: What did he say about it?

THE WITNESS: He asked me did I sign one, and I told him yes, I did.

JUDGE NACHMAN: Is that all he said about a union?

THE WITNESS: That was it.

Q (By Mr. Ladov) Did he make any other comments during this conversation?

A He also said that supposing the company didn't agree with the union and decided to lay everyone off, then what?

I told him he would just have to lay me off, because I was with the union.

Q Did you have any other--where did this conversation occur?

A It took place in Mr. Brower's office, the stock room really.

JUDGE NACHMAN: AT which store?

THE WITNESS: 501 Smithfield.

Q (By Mr. Ladov) wHen did it occur?

JUDGE NACHMAN: He has testified to that.

Q (By Mr. Ladov) Did you have any other conversations with Mr. Brower about the union?

A NO, I didn't.

Q You have testified you were discharged on September 13, 1975?

A Right.

Q Could you relate the circumstances regarding or surrounding your discharge?

A Right, I got a phone call from Mr. Brower, he told me that a Mr. Holmes wanted to talk to me about something.

JUDGE NACHMAN: Who is Mr. Holmes?

THE WITNESS: He is one of the employees for the

Florsheim Shoe Store.

JUDGE NACHMAN: AT one of the local stores?

THE WITNESS: From Chicago, I believe.

JUDGE NACHMAN: You then talked to Mr. Holmes?

THE WITNESS: Right.

JUDGE NACHMAN: WHat did he tell you?

THE WITNESS: He said he no longer needed any part-time help and he was going to all full-time employment and he would have to lay me off at the present time. If he needed me when they were busy, that he would call, he would give me a call.

JUDGE NACHMAN: Did he make any statements as to when this rule, this change from part-time help would be applicable to only the Pittsburgh area, would it apply to all of the company stores?

THE WITNESS: He really didn't say, he was talking directly to me.

JUDGE NACHMAN: All right.

Q (By Mr. Ladov) Did either Mr. Brower or Mr. Holmes at this time offer you a full-time job?

A No, he didn't.

Q Were you ever offered a full-time job, Mr. Foreman?

A About two weeks ago, on February the 12th he called me.

Q Would you explain that?

A Right, Mr. Brower called me and asked me did I want a full-time job, I told him no, I didn't.

Q Where did he call you, where were you when you received this call?

A I was at my otherplace of employment, Robert Morris College.

Q Do you work there on a full-time basis?

A Yes, I do.

Q Were you working there in a full-time capacity while you were employed at Florsheim?

A Yes, I was.

Q Have you ever told Mr. Brower that you were working full-time at Robert Morris?

A Right.

Q When was that, do you recall?

A The day I started, the day I applied for the job really.

Q Mr. Foreman, you testified that on September 18th, you were told that the company was not going to use part-time employees anymore, had you ever heard that before?

A NO, I hadn't.

Q Is that the first time you had ever, anyone had ever told you that?

A Yes.

JUDGE NACHMAN: It's obvious, isn't it? If he never heard it before.

Q (By Mr. Ladov) Mr. Foreman, did you ever learn of Ronald Bakowski's discharge?

A. Yes, I did.

Q When did you learn of that?

A. September the 30th, September I think or October, I mean August the 30th.

JUDGE NACHMAN: Just a minute, you have given us three different months, which one is it?

THE WITNESS: August the 30th.

Q (By Mr. Ladov) How did you learn about Mr. Bakowski's discharge?

A. By a letter that Mr. Brower was writing to Mr. Bakowski and he asked me to read the letter.

Q He showed you the letter?

A. Showed me the letter and asked me what I thought about it.

Q What did you say?

A. I told him simply that he was the boss, there was nothing I could do or say about it.

Q Did Mr. Brower make any other comments to you at this time?

A. No, not that I can remember.

Q When did Mr. Brower show you this letter?

A. It was Saturday, October 30th, in the morning, some time between nine thirty and ten o'clock, some time between that time.

Q What was the date again, Mr. Foreman?

A August 30th.

Q Was Mr. Bakowski working in the store that day?

A No, he was on vacation.

Q Had he just started vacation?

A Yes, he did.

Q Did Mr. Brower show anyone else that letter, to the best of your knowledge?

A Louis Scott.

Q When did he show Mr. Scott that letter to the best of your knowledge?

A Same morning before he showed it to me.

JUDGE NACHMAN: How do you know that he showed it to Mr. Scott?

THE WITNESS: Because I saw him show it to Mr. Scott. We were both in the stock area of the store.

Q (By Mr. Ladov) Mr. Foreman, I show you what has been received into evidence as General Counsel's exhibit number twelve, can you identify that?

A Right, this is the letter that Mr. Brower was writing on the morning of August 30th.

Q 1975?

A Right.

Q Is that the letter that he showedyou?

A Yes, it is.

MR. LADOV: I have no more questions, Your Honor.

JUDGE NACHMAN: All right.

MR. DICKER: I would ask General counsel for any affidavit Mr. Foreman has given.

It's two and a half pages, Your Honor, may I have a few minutes?

JUDGE NACHMAN: Go ahead and read it.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Foreman, you worked part-time for Florsheim?

A YEs, sir.

Q What--well, you worked on Saturdays?

A Monday, Thursday and Saturday.

Q On Thursday, you worked Thursday what hours?

A From five to nine.

Q Do you know whether or not you worked Thursday, August 28th?

[illegible] said [illegible] worked Sat [illegible]

A Yes, I did.

Q Let me show you this letter dated August 23th from Mr. Brower, you said you saw that on Saturday, the 30th of August?

A Yes, I did.

Q You can't remember seeing that on Thursday evening,

August 28th?

A No, sir, I don't.

Q Did Mr. Brower talk to you at all on Thursday evening about Mr. Bakowski?

A Not that I can remember.

Q How long did you work in that store, 501 Smithfield?

A Almost a year.

Q And Mr. Bakowski worked there as well?

A Yes, he did.

Q Do you remember any arguments or fights that Mr. Bakowski got into with other employees?

A Maybe a verbal conversation with William Flaherty.

Q What do you mean verbal conversation, was it a loud argument?

A Not really loud, I think they were both trying to express a point.

Q About business?

A About whatever it was.

Q You didn't overhear it?

A No.

Q Did you ever hear Mr. Bakowski yell at Mr. Flaherty?

A Maybe once or twice.

Q Did you ever hear Mr. Bakowski have any arguments with a Mr. Fisher?

A No, sir, I haven't.

Q What about Mr. Scott?

A No, sir, I haven't.

Q Do you remember a time when Mr. Scott talked to Mr. Bakowski about his arguing with Mr. Flaherty?

A No, I don't.

Q Do you remember Mr. Brower talking to Mr. Bakowski about his behavior in the store?

A Do I remember?

Q Yes.

A No.

MR. LADOV: Objection, Your Honor, Respondent has not established that Mr. Foreman was ever there during any of these conversations.

JUDGE NACHMAN: This is cross examination.

MR. DICKER: That is what I'm trying to find out.

JUDGE NACHMAN: That question is proper.

Q (By Mr. Dicker) Did Mr. Bakowski ever talk to you about--strike that.

Did Mr. Brower ever talk to you about Mr. Bakowski other than on the 30th of August?

A A couple of times.

Q What did he say?

A He was telling me that he was tired of his down attitude, same thing he put in theletter.

Q He told you--

Bakowski [illegible]
Said [illegible]
under [illegible]
[illegible]

JUDGE NACHMAN: What did he tell you?

THE WITNESS: His down attitude, whatever that meant.

JUDGE NACHMAN: Did you know what it meant?

THE WITNESS: I really didn't know.

Q (By Mr. Dicker) But you didn't ask him?

A No.

Q Your testimony is on these two occasions Mr. Brower talked to you about Mr. Bakowski that he was tired of his down attitude?

A I don't think he liked Mr. Bakowski for one reason or another.

Q All right, he didn't like him, but he said to you on two different occasions that you can recall that he was tired of Mr. Bakowski's down attitude?

A Right.

Q Now, Mr. Foreman, you got a card from Mr. Scott, a union card from Mr. Scott on August 25th, is that right?

A Right.

Q Did you ever hear about the union before the 25th of August?

A No, I didn't.

Q How long was this conversation that you had with Mr. Scott?

A Just a couple of minutes.

Q He told you what during those couple of minutes?

A. Were we trying to form a union and were trying to get more money and more benefits.

Q. Did he tell you anything else?

A. I think that was all he told me the first time.

Q. What did you tell him?

A. I told him I was for it.

Q. You were for it?

A. Right.

Q. On the basis of a two or three minute conversation?

A. When it meant some money, I was for it.

Q. Were you interested in what the card said or were you interested in the money?

A. I was interested in the money and the card, I filled it out.

Q. You didn't fill the card out on that day, did you, the 25th?

A. No, I lost the card.

Q. Did you read it on the way home?

A. No, I can't say that I did.

Q. When was the first time that you read the card?

A. The second one he gave me.

Q. The second one he gave you was on the 28th?

A. Right.

Q. Then you took it down to the men's room?

A. Right.

Q You read it down in the men's room?

A Yes.

Q You filled it out?

A Yes, I did.

Q You then brought it back up to Mr. Scott in the store?

A Right.

Q How long did that taka from the time he gave youthe card until the time you brought it back to him?

A A couple of minutes, I really don't remember, maybe ten, fifteen minutes.

Q Was it ten or fifteen minutes or was it a couple of minutes?

A It might have been ten or fifteen minutes, I really dont remember.

Q Was it two or three minutes?

A I told you, I really don't remember.

Q Do you remember that you read the card?

A Yes, sir, I do.

Q That you remember?

A Yes.

Q Do you remember what the card said now?

A No, I don't.

Q Do you have any idea in general terms of what the card now says?

A. No, I don't.

Q No recollection?

A. NO.

Q But you do remember that Mr. Brower showed you a letter on Saturday, the 30th and not Thursday, the 28th?

A. Yes, I do.

Q That you clearly remember?

A. Clearly remember.

Q By the way, what was the rate you said you received, the commission rate you said you received on Florsheim Shoes?

A. I think it was 3, 5 and 5.

Q Three percent on what kind of shoes?

A. I think it was Florsheim, I think.

Q You don't remember?

A. NO.

Q And five percent on what?

A. Worthmore.

Q You don't remember that commission rate?

A. No.

Q How long did you work in the store?

A. For about a year.

Q And you don't remember the commission rates?

A. NO, I don't, I was only selling them for about six months.

Q You were selling for six months and you don't remember the commission rates?

A Not really.

Q Now, you said that there came a time when Mr. Brower called you into the office?

A Right.

Q Tell us, to the best of your recollection again, what Mr. Brower said to you and what you said to him?

A About the union?

Q How long was that conversation in theoffice?

A A couple of minutes, maybe about ten minutes.

Q Tell us to the best of your recollection what was said in that ten minutes?

A He asked me about the union.

Q Did--what did he ask you?

A He asked me did I sign for the union, I said yes, I did.

Q Is that the first thing he asked you?

A I can't remember if that is exactly the first thing he asked me or not.

Q Isn't the first thing he asked you, sir,--strike that.

Isn't the first thing he asked you, why you were in favor of the union?

A Right.

Q Isn't that the first thing he said when you came in?

A Yes.

Q Then you told him why you were in favor?

A Yes, I told him it was about the money.

Q Then he said to you that he thought that the union was not going to be good for the Florsheim and good for you?

A Right.

Q He has tried to persuade you not to be in favor of the union?

A Right, in somewhat of a way.

Q All right, then he said to you, he asked you what would happen if Florsheim decided it didn't want a union and laid everyone off?

A Right.

Q He said everyone?

A Yes.

Q Did he say close the stores?

A He didn't say that.

Q What did you understand him to mean?

A Just what he said.

MR. LADOV: Objection, Your Honor.

JUDGE NACHMAN: He wants to know what--we only want to know what Mr. Brower said at the time, inferences we do not.

Q (By Mr. Dicker) After that he said, you said he asked you whether you signed a card?

A Yes, he did.

Q He already started the conversation by saying to you, asking you why you were in favor of the union, isn't that right?

A Right.

Q Are you sure he asked you whether you signed a card at the end of the conversation?

A Yes, I am sure now.

Q You arepositive?

A Yes.

JUDGE NACHMAN: Are you testifying that there is a question about whether you signed the card,came at the end of the conversation or sometime during the conversation?

THE WITNESS: At the end of the conversation.

JUDGE NACHMAN: All right.

Q (By Mr. Dicker) Now, Mr. Foreman, you did receive a phone call from Mr. Brower about the 18th of September, is that right?

A Yes, I did.

Q What time of the day, do you remember?

A Not exactly, it was sometime around noon, between noon and three o'clock.

Q You had a full-time job at a college book store?

A Right.

Q Mr. Brower said that Mr. Holmes wanted to talk to you?

A Right.

Q Had you ever met Mr. Holmes before?

A I think I had.

Q Do you know who Mr. Holmes was?

A He was some type of representative for Florsheim Shoe Company. I'm not sure exactly what.

JUDGE NACHMAN: You understood he was from Chicago?

THE WITNESS: Right.

Q (By Mr. Dicker) What did Mr. Holmes say to you?

A He told me that they were no longer going to need part-time help, they were going all full-time employment.

Q Didn't he ask you whether you wanted a full-time job?

A No, he didn't.

Q Did he ask you whether you were available to full-time, to work full-time?

A No, he didn't.

Q Did Mr. Brower ask you whether you were available to work full-time?

A NO, he didn't.

Q At no time during that conversation on the 18th did Mr. Brower or Mr. Holmes ask you if you were available to work full-time?

A No, they didn't.

Q Did they ask you whether you were interested in working full-time?

A No.

Q Didn't he tell you you were a good employee?

A Yes, he did.

Q And that he'd like to have you full-time?

A No, he didn't.

Q Are you sure of that?

A I'm sure.

Q Do you remember that part of the conversation?

A I remember.

Q Then he said if he had any need in the future he'd call you?

A Yes, he did.

Q You got a phone call on February 12th you say?

A Yes.

Q From whom?

A From Mr. Brower.

Q Again, at the college book store?

A Yes, it was.

Q He asked you whether or not you were available to work full-time?

A Yes, he did.

Q What did you tell him?

A I told him no.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No, Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

MR. DICKER: I am returning the affidavit of Mr. Douglas Foreman to General Counsel.

JUDGE NACHMAN: Call your next witness, please.

MR. LADOV: I call Larry Paranzino, please.

Whereupon,

LARRY PARANZINO

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address?

A Larry Paranzino, 2352 Edgar Street, Pittsburgh, Pennsylvania.

Q Were you ever employed by Florsheim Shoes, Mr. Paranzino?

A Yes, I was.

Q When did you begin your employment for Florsheim?

A August 25th, 1975.

Q How did you get your job?

A I was informed by another employee that, at the Smithfield branch, that they could use some stock room help and I was advised to go and talk to Mr. Brower, so I did that.

Q What happened when you talked to Mr. Brower?

A Well, we made up some hours that fit my schedule, being that I went to school and I worked there three days a week.

Q You were hired as a part-time stock boy?

A Right.

Q At the Smithfield Street Store?

A Right.

Q When did you go and apply for this job with Mr. Brower?

A About a few days before I started work.

Q What was your rate of pay, Mr. Paranzinc?

A Two ten an hour, no commission.

JUDGE NACHMAN: You didn't do any selling?

THE WITNESS: No.

Q (By Mr. Ladov) You mentioned you go to school, what school do you go to?

A Carrick Highschool.

Q You are a full-time highschool student?

A Yes.

Q And you informed Mr. Brower of this when you applied for the job?

A Yes.

Q Were you ever terminated from Florsheim Shoes?

A Yes, I was.

Q When?

A September 18th, 1975.

Q Mr. Paranzino, did you ever learn about the employees' attempt to organize a union?

A Yes.

Q Would you describe the circumstances, please?

A I was working downstairs, I was approached by Louis Scott to sign a union card, he asked if I'd like to sign. He told me that all the employees were trying to get into the union and that they need all the help they can get, you know, as many people as they could get to sign. So I signed on that day.

MR. LADOV: Mark this as General Counsel's exhibit nineteen.

(The document above-referred to was marked General Counsel's exhibit No. 19 for identification.)

Q (By Mr. Ladov) I show you what has been marked as General Counsel's exhibit number nineteen, can you identify that?

A Yes, this is the card I signed.

Q Is that the card that Mr. Scott gave you?

A Yes.

Q Can you identify the signature?

A Yes, that's mine.

Q Is that the date on the card, the date on the card, is that the date you signed this card?

A Yes.

Q Is it also the date Mr. Scott gave you the card?

A Yes.

Q Did you read the whole card?

A Not the entire card, not the small print in the left-hand corner.

Q Did you read the top part of the card?

A Yes.

Q And you filled in all the information?

A Yes.

Q After you filled out the card, Mr. Paranzino, what did you do with it?

A I returned it to Mr. Scott.

JUDGE NACHMAN: Is all the handwritten material on this card in your handwriting?

THE WITNESS: All but Florsheim Shoe Shop, you see where I scratched out, I wrote wrong information on that line, Mr. Scott noticed it and he scratched it out and then he wrote in "Florsheim Shoe Shop" and I was watching him when he did it and then I signed the card.

JUDGE NACHMAN: Then in the lower part of the card where it has written in "The Florsheim Shoe Company"?

THE WITNESS: I didn't write that either.

JUDGE NACHMAN: Was it on the card when you signed it?

THE WITNESS: I believe it was.

MR. LADOV: I offer General Counsel's exhibit number nineteen into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: Nineteen will be received.

(The document heretofore marked General Counsel's exhibit No. 19 was received into evidence.)

Q (By Mr. Ladov) Other than Mr. Scott, did you discuss the Union with any other employees?

A No.

Q Did your manager, Mr. Brower, ever ask you anything about the union?

A Yes, he did.

Q What did Mr. Brower ask you?

A He asked if I was approached by the union and I told him that I was. He wanted to know who approached me but I refused to tell him.

Q Then what happened?

A Then that was the end of the conversation.

Q When did this conversation occur?

A About two weeks after I signed the card.

Q Where did it occur?

A Downstairs in the stock room.

Q Was anyone else present?

A No.

Q Directing your attention now to September 18th, Mr. Paranzino, the date you were discharged, could you please relate the circumstances surrounding your discharge?

A I came to work, regular work day, I was told to stay upstairs in the store and there was all new faces in the store I never seen before. I was told to stay upstairs and work in the backroom which wasn't my regular procedure.

So I stayed upstairs for about fifteen minutes, then Mr. Flaherty advised me that Mr. Brower would like to see me downstairs.

So I went down and Mr. Brower was with another company official and they told me that Florsheim Shoes was introducing a new format, that they weren't keeping any part-time workers any longer and that they would have to terminate me.

Q Did they say anything else?

A No, that was it.

Q At this time did either of these gentlemen, Mr. Brower or the other gentleman, offer you a full-time position?

A No, they didn't.

Q Is it your testimony that you worked for Florsheim a little over three weeks?

A Yes.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: I call upon the General Counsel to supply any affidavits or other statements signed by the witness.

May I have a few minutes to read it, Your Honor?

JUDGE NACHMAN: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Paranzino, you were a stock clerk?

A Right.

Q And you were working in the store, it was your second day in the store that you received the card from Mr. Scott?

A Yes.

Q Did he tell you anything else other than the fact that he wanted you to sign the card, that the people in the store were organizing a union?

A That's all he told me.

Q You told him you would sign the card?

A Yes.

Q And you took it and filled it out, is that right?

A Yes.

Q Other than the--did you read the material on the very bottom of the card underneath the words "The Florsheim Shoe Company" that were written, the bottom half of the card?

A No, I didn't.

Q Did you read the material to the left of your signature?

A No.

Q How long did it take you to fill out the card?

A Five minutes.

Q Then you gave it back to Mr. Scott?

A Yes.

Q The next time you heard anything about the union was a couple of weeks later, Mr. Brower called you or spoke to you in the stock room downstairs?

A Well, I heard that they were having a meeting tonight downstairs in the conference room a few times, but I didn't hear nothing about it.

Q Who was having a meeting?

A Some of the company officials.

Q Were having a meeting about it downstairs in the stockroom of the store?

A Yes, I believe.

Q Or were they having a meeting someplace else?

A No, downstairs in the store.

Q Did you ever see any company officials meeting downstairs in the store?

A Yes.

Q You did, who did you see meeting downstairs in the store?

A I don't know who they are.

Q Was it Mr. Brower?

A Mr. Brower was there, yes.

Q What about Mr. Levine, do you know Mr. Levine?

A I know Mr. Levine.

Q Was he there?

A I believe so.

Q You believe so or you don't know?

A I am not real sure.

Q How often were these meetings that the company held downstairs in the store?

A Not too often.

Q Was Mr. Brien, the man on my left, there?

A I don't know.

JUDGE NACHMAN: Do you recall seeing him there?

THE WITNESS: No, but I don't recall not seeing him either.

Q (By Mr. Dicker) Do you recall how many people were in these meetings downstairs in the store?

A No.

Q Now, Mr. Brower spoke to you also downstairs in the store, is that ri

A Yes.

Q What is downstairs?

A The stock room and then off the stock room there is a conference room with a table and a bunch of chairs.

Q You don't know what these meetings, what the company officials at these meetings discussed, do you?

A No.

Q Why do you think they were discussing the union?

JUDGE NACHMAN: You need not answer that.

He didn't say he felt they were discussing the union.

MR. DICKER: The question I asked him, YOur Honor, whether there were any other discussions about the union between the time he got the card from Mr. Scott and the conversation relating--

JUDGE NACHMAN: He said he had no discussions.

MR. DICKER: I don't think that was the testimony.

JUDGE NACHMAN: Allright, then go ahead, answer the question.

Q (By Mr. Dicker) Why do you think they were meeting about the union?

A Why do I think?

I don't know.

JUDGE NACHMAN: Do you know whether they were having a meeting about the union?

THE WITNESS: No.

Q (By Mr. Dicker) Now, Mr. Brower asked you whether or not you were approached by the union?

A Right.

Q Is that the word he used, "approached"?

A Yes.

Q You told him you were?

A Right.

Q Then he asked you who was it, who approached you?

A Right.

Q You said that you didn't want to tell him?

A Right.

Q At that point he said what?

A He said okay.

Q And?

A And left.

Q And so that was the entire conversation?

A Yes.

Q Now, in the meeting you had on September 18th with Mr. Brower and another company official, was he introduced to you, the other company official?

A Yes.

Q Do you remember his name?

A NO.

Q Was it Mr. Holmes?

A No, I don't think.

Q That name doesn't sound familiar?

A No.

Q Did you say no?

A No.

Q Who did the speaking at that meeting, mr. Brower or Mr. Holmes, Mr. Brower or the other company official?

A The other company official.

Q He said the company had changed its policy?

A Right.

Q And that they were going to use only full-time employees?

A Yes.

Q Did he say anything about the company policy concerning the use of stockroom help?

A No, he said nothing about that.

Q Did he say that the company did not want to use anymore stockroom people?

A They didn't say that.

Q And that you were only a part-time worker and they had to let you go?

A Right.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No questions, Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: Let the record show that I am returning the affidavit of Mr. Larry Paranzino.

MR. LADOV: Mr. William Flaherty, please.

Whereupon,

WILLIAM FLAHERTY, JR.

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

MR. DICKER: May I have a moment before we start questioning?

JUDGE NACHMAN: Yes.

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address, please.

A William George Flaherty, Jr., 139 Finley Street, Pittsburgh.

Q By whom are you presently employed?

A Florsheim Shoes, 501 Smithfield.

Q When did you begin, would you trace your employment history with Florsheim?

A I worked with them, I think it was '71, spring of '71 to January of '72 and then October of '74 and I'm still employed.

Q This is at the Smithfield Street Store?

A Right.

Q And your immediate supervisor is?

A B. M. Brower.

Q What is your position there?

A I'm assistant manager.

JUDGE NACHMAN: I want to clear something up. On the employment list, I think it's General Counsel's exhibit two, it lists an N. G. Flaherty, is that the same individual?

MR. LADOV: Yes, it is, it should be W. G. Flaherty.

Q (By Mr. Ladov) What are your duties in the store, Mr. Flaherty?

A Basically I just sell, operate the store.

JUDGE NACHMAN: Do the parties stipulate that the employment list be corrected accordingly?

MR. DICKER: Yes, Your Honor.

Q (By Mr. Ladov) Did you ever learn about the employees' efforts to organize a union at Florsheim?

A Twice.

Q Would you describe the first time, please?

A I'm not sure, it was either December or January, December, '74 or January '75, I made a phone call to Monroeville Mall store calling for a shoe. At that time someone mentioned on the phone the union while the other guy was checking my shoe. All I remember is something was mentioned about a union.

JUDGE NACHMAN: Who were you talking to, another employee?

THE WITNESS: Yes, at the Monroeville Mall store.

They gave me an answer on my shoe and I just went back to my customer.

Q (By Mr. Ladov) Do you remember which employee you were talking to?

A I'm not sure if it was Osselburn or Macko.

Q And the second time you learned about a union?

A Some time in July we went out to, my wife and I went out to the Monroeville Mall to get something for my daughter and we stopped at the store and they started mentioning something about a union , something about letters, I think it was New York or something.

I had my daughter with me at the time, oh, we walked in because we wanted George and Joe to call upstairs at that time because my wife was going upstairs to buy a pair of shoes. That's the purpose we went in there. They called upstairs and informed them that I was coming, and then we left.

Q Mr. Fláherty, did Mr. Brower ever ask you about a union?

A Yes, sir.

Q When?

A I'm not sure if it was--well, it was the last weekend, it was either a Friday or Saturday, the last weekend in August.

JUDGE NACHMAN: 1975?

THE WITNESS: 1975.

Q (By Mr. Ladov) I show you this calendar, Mr. Flaherty, what dates?

A It was either the 29th or the 30th, sir, it was one of those two.

Q What did Mr. Brower ask you?

A He come over and said, are you in the union, I said no.

Q What else was discussed?

A That was the extent of our conversation.

JUDGE NACHMAN: No mention was made of a union card?

THE WITNESS: No, nothing.

Q (By Mr. Ladov) Did you ever have any other discussions--strike that.

Did Mr. Brower ever ask you again about the union?

A He asked me two weeks later. He called me back and he asked again.

Q What did he ask you?

A He said, are you in the union, I said no.

Q Anything else?

A At that time, no.

Q This second time, would that be, you said, approximataly two weeks later, so that would take us to--

JUDGE NACHMAN: Mid-September.

THE WITNESS: Around mid-September some time.

Q (By Mr. Ladov) Were you aware that Mr. Brien and Mr. Silverhorn had come into Pittsburgh on September 8th and 9th, do you recall that, seeing them?

A NO, sir.

Q At the time , the second time that Mr. Brower asked you about the union--, did he speak with any other employees?

A Yes, sir, I believe he did, he like called usback.

JUDGE NACHMAN: Did he speak to any other employees at a time when you heard the conversation?

THE WITNESS: No, sir, no.

Q (By Mr. Ladov) YOu mentioned that he called you back, one at a time?

A Right.

Q All around the same day?

A I believe so, yes.

Q Was that the time that he asked you, the second time that he asked you about the union?

A Right.

Q Each employee in the store?

MR. DICKER: Objection.

JUDGE NACHMAN: This is your witness.

MR. LADOV: I understand.

MR. DICKER: I have an objection, he testified that he didn't overhear any other conversations.

JUDGE NACHMAN: He is describing how these events occurred, this is something that the witness saw and he can testify to.

MR. DICKER: But he testified to that already, Your Honor, the employees were called back.

JUDGE NACHMAN: He is attempting to flush out the ends and make the story intelligible.

Q (By Mr. Ladov) Did you see him call each employee in the store back to him?

A. He called the people back, yes, one at a time.

JUDGE NACHMAN: How did this happen? He called one person back, he talked to them, when they left he called another one back?

THE WITNESS: Right.

JUDGE NACHMAN: This was just one right after another? Continuous without interruption?

THE WITNESS: Not continuous, we're selling, they come in when they didn't have a customer. I don't think it could have been continuous.

JUDGE NACHMAN: Then the first opportunity he'd call the next one back?

THE WITNESS: Right.

JUDGE NACHMAN: But you heard no part of the conversation that he had with those people?

THE WITNESS: No, sir.

Q (By Mr. Ladov) Mr. Flaherty, did you ever sign a union card?

A No, sir.

Q Did you in any way support the union?

MR. DICKER: Objection.

JUDGE NACHMAN: He can ask him if he supported the union. I think you ought to ask the witness if he did certain things, when you say support, you call for a conclusion.

What one might consider support, another one may not.

Q (By Mr. Ladov) Did you ever attend any union meetings ?

A No, sir.

JUDGE NACHMAN: Did you talk in favor of the union to any employees?

THE WITNESS: Sir, I neverknew there was a union until Brower asked me about it.

JUDGE NACHMAN: After he asked you about it, did you talk to any other employees in a tone that was favorable to the union?

THE WITNESS: The second time he asked me I called and asked three people, first of all, why was I never asked to be in the union, there was no response.

JUDGE NACHMAN: That's all the statements you made?

THE WITNESS: Right.

MR. LADOV: I have no further questions of Mr. Flaherty.

MR. DICKER: I call upon the Board to produce any affidavits that may have been signed by Mr. Flaherty and it's been handed to me, Your Honor. May I have a few moments?

JUDGE NACHMAN: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) You began working for Florsheim when?

A October of '74.

Q Where did you work before then?

A Northway Mall store.

Q Florsheim?

A Right.

Q Before that?

A Allen Shoe store and before '71, Beck Shoe Store.

Q Now, let me takeyou to the beginning or middle of August of 1975, was Mr. Scott working in the store then?

A Yes, sir.

Q Did he offer you a union card to sign?

A NO, sir.

Q Are you sure he didn't?

A Yes, sir.

Q If I told you that Mr. Scott testified he did, would that refresh your recollection and make you change your testimony?

A NO, sir.

Q No, he did not?

A No.

Q Now, who else worked,--what store did you work in in August of 1975?

A 501 Smithfield.

Q Who else worked in that store with you?

A Mr. Scott.

Q Back in August of 1975, the middle of August?

A Mr. Scott and Mr. Bakowski, myself and Brower.

Q What about Foreman?

A Yes, Foreman and Larry.

Q Was Mr. Foreman the only part-time employee there?

A Stockboy also.

Q Did you always have a stockboy in that store when you were working there?

A Yes, sir.

Q Also had a part-time stockboy?

A Right.

Q Now, how long did you work with Mr. Bakowski at that store?

A Since I started in October.

Q October of?

A '74.

Q Did you ever have any problems with Mr. Bakowski?

A WEll, it was a continuous thing.

Q What was?

A Problems with Mr. Bakowski.

Q What kind of problems?

A Like when I was hired there, sir, I had heard about Ron from the previous store, when I was hired there Mr. Brower said don't think it's you he's after. I said I understand that, I don't think he has anything personal against me, it's just the way he is.

Q What does he do that creates this problem?

A Pardon?

Q What does he do, why is there this problem with Mr. Bakowski?

A Well, I don't--you,know, I can't analyze that specifically.

JUDGE NACHMAN: What did he do that you found objectionable?

THE WITNESS: Well, it's not specifically what I did--

JUDGE NACHMAN: Not what you did, what did he do that you couldn't get along with him?

THE WITNESS: It was the reverse, sir.

Q (By Mr. Dicker) What do you mean reverse?

A He couldn't get along with me, that was the problem.

JUDGE NACHMAN: All right, what did he do?

THE WITNESS: What did I do that I couldn't get along with him, I think.

JUDGE NACHMAN: Just tell me, what did he say or do that led you to believe that he couldn't get along with you?

MR. DICKER: Maybe I'll do it this way, Your Honor.

JUDGE NACHMAN: Let me see if he can answer that question, then you can take over.

THE WITNESS: What was thequestion, sir?

JUDGE NACHMAN: My question was, what did he say or do that led you to believe that he couldn't get along with you?

THE WITNESS: In the beginning, nothing, but over a period of time--

JUDGE NACHMAN: What was it that he did or said?

THE WITNESS: Specifics, I can't remember, I can't remember incidents.

JUDGE NACHMAN: Tell us what you remember.

THE WITNESS: Just general actions.

JUDGE NACHMAN: What was it?

THE WITNESS: He didn't like, I don't think he liked it because I joked a lot. I enjoy a lot of little things and he didn't like it, he didn't like me joking with customers.

JUDGE NACHMAN: He made his dislike made known to you?

THE WITNESS: Very vividly.

Q (By Mr. Dicker) What do you mean vividly?

A Well, I would hear about it from him, I would get looks, answers, snarls.

JUDGE NACHMAN: What did he say?

THE WITNESS: you want it--

JUDGE NACHMAN: I want to know what he said.

THE WITNESS: Can I express it?

Q (By Mr. Dicker) Yes, the words he used.

JUDGE NACHMAN: If he said something, you know what he said, don't you?

THE WITNESS: Yes.

Well, quite a few times he would say, I remembertwo or three times that he would say fuck you.

Q (By Mr. Dicker) On the store--

MR. DICKER: Your Honor?

JUDGE NACHMAN: Let's have decorum here.

Q (By Mr. Dicker) He said fuck you in the store?

A In the store.

Q In the selling area?

A No, not in the selling area.

Q Did you ever have any arguments with Mr. Bakowski?

A constantly.

Q Were they loud?

A A few.

Q Did you ever complain to Mr. Brower about him?

A Lots of times.

Q What did Mr. Brower do?

A It wasn't actually--well, let me put it this way, it wasn't actually complaining, it was talking about it because I had to relieve the tension. We would discuss it.

Q Did Mr. Bakowski ever have any arguments with other employees in the store?

A A few with Mr. Brower.

Q Arguments?

A He would incite him.

JUDGE NACHMAN: What were the arguments about?

THE WITNESS: One specific time we were trimming the windows, redoing all of our windows and Mr. Bakowski grabbed the stockboy's side and says, that's why we're not doing any business, look at the way they're doing it. Now, Brower takes pride in doing his windows, especially his best window and the stock boy come over and told about that and I thought Bud was just going to light all the bulbs in the window, he was upset at the time.

Incidents like that.

Q (By Mr. Dicker) Do you remember an incident with Mr. Fisher?

A Mr. Fisher wasn't there when I was there, sir.

Q Do you remember an incident where someone complained about the use of foul language on the selling floor?

A Yes.

Q Tell us about that?

A Well, if this is the time, there was a guy and his girl come in, the guy come in with a drink in his hand, an empty glass, it was a plastic glass. He put it on the counter, he had his clothes, suits and that and he put them on the counter and bought a pair of shoes.

We were standing around, me and Bud I believe, the guy was leaving and Ron said, I don't know why he said it, he said--

MR. LADOV: Objection.

MR. DICKER: Let him finish the answer.

JUDGE NACHMAN: Just tell us what he said.

THE WITNESS: He said, that bitch.

JUDGE NACHMAN: Who did he say it to?

THE WITNESS: He said it out loud.

JUDGE NACHMAN: So that everybody could hear?

THE WITNESS: The guy thought he was talking about his girl.

MR. LADOV: Objection, your Honor.

JUDGE NACHMAN: Sustained.

Q (By Mr. Dicker) WHat about toward the end of August, was there an incident or disagreement between you and Mr. Bakowski, the end of August of 1975 about the 22nd or the 25th of August?

A There was a money incident.

Q Concerning sales tickets?

A Right.

Q Would you tell us about that?

A I was doing the books that night, I think it was evening, we cut early, it was either a Monday or Thursday, we cut early and I was doing the books. I finished with the books that evening, Ron come back and was looking through the tickets. The next thing I heard was, huh, he ripped me off three times, it was.

JUDGE NACHMAN: That's Mr. Bakowski's statement?

THE WITNESS: yes, he said, right, I ripped him off three times. I just said well, where are the mistakes. I asked him to go through and show me and if it's wrong, I'll correct it. He like snuffed it off, he said that's okay and I said no, show me and then I started getting really aggravated I said show me. He just kept on, that's okay, don't worry about it.

Q (By Mr. Dicker) Ripping him off, what did you mean, did you understand what he meant?

A I assumed what he meant, either numbers were changed on the sales tickets, sales numbers or charges were written that night and they were written wrong.

Q So you asked him to show you the change or the alteration and he said no, that's all right?

A Right, he says no, don't worry about it, like he was snuffing it off and by then I was really aggravated.

Q So what happened then?

A I got so aggravated I went home, I left the store early.

Q Did you--did he come to work the next working day, which would have been the 25th or the 26th?

A We were in early that day.

Q The next day?

A Right, I was still a little heated. I informed Mr. Brower.

Q You informed Mr. Brower about the incident?

A Right.

Q Did Mr. Brower do anything about it in your presence?

A He asked Ron to go back and find the sales tickets. First he went back to look through them.

Q First he, being Mr. Brower?

A. Right, he looked through them and then he asked Ron to go and look through them, where the mistakes were.

Q. Did Ron Bakowski go back and look?

A. Right, he went back and he found one, which was not my mistake.

Q. Then what happened?

A. You know, when that happened I was still very uptight, very upset. He said he was sorry.

Q. And then?

A. That was the end of that incident.

Q. Did you on that day or the next day talk to Mr. Brower again about Mr. Bakowski?

A. I don't know.

Q. On Wednesday, August 27th, did you have a beer with Mr. Brower?

A. It was--no, sir.

Q. You did not?

A. NO.

Q. Let me show you this Zerox copy of a document and ask you whether or not you recognize this document?

A. Yes, I recognize that, right.

Q. What is that?

A. That's my affidavit.

Q. Is that your signature on the last page?

A. Right.

Q Now, sir--

JUDGE NACHMAN: Is that document in your handwriting?

THE WITNESS: That is not my handwriting, no, sir.

Q (By Mr. Dicker) Would you read the first four lines on the top of the second page of the document?

A Yes.

Q Did you read those?

A Right.

Q Does that refresh your recollection about having a beer with Mr. Brower?

A Yes, sir, but the day was wrong.

Q What day did you have a beer?

A It was Thursday, it was the next day.

Q Thursday, the 28th of August?

A Right.

Q Tell us, why did you happen to have a beer with Mr. Brower?

A Sometimes after work we have a drink.

Q What did you talk about during that session, meeting?

A Brower was rather upset at this time. It was Ron's day off, his vacation started that week and he come in to pick up his pay and during that time I guess he went down to 200, he was at 200.

JUDGE NACHMAN: What do you mean he was at 200?

THE WITNESS: We have two stores in town, 200 Fifth

Avenue. He was at 200 Fifth Avenue for a few hours. We got a phone call, I think, I believe it was Jim Ball, I'm not sure. I think it was him though, he said Ron was down here --

JUDGE NACHMAN: Did you have that telephone conversation?

THE WITNESS: They were calling for a shoe at the time.

JUDGE NACHMAN: I'm asking did you take the telephone call?

THE WITNESS: Right.

JUDGE NACHMAN: Do you know who you talked to?

THE WITNESS: I think it was Jim Ball.

Q (By Mr. Dicker) Go ahead.

A He said Ron was down here and he was verbally assulting the store, he says he was just tearing into everything up there.

Q That's why Mr. Brower told you he was upset?

A NO, it was when Jim Ball come up to exchange shoes later in the day.

Q Mr. Flaherty, I'm trying to get to what you and Mr. Brower said when you had the beer on theevening of August 28?

A He says that was it.

Q All right, Mr. Brower said that was it?

A Yes.

Q What was he talking about?

A He was going to fire Bakowski.

Q He told you he was going to fire him on August 28th?

A Right.

Q What did you say?

A I agreed with him at that time.

Q Was there any other conversation by you and Mr. Brower about firing Bakowski on that day, August 28th?

A Specifically that date, earlier--well, when the phone call come in he was thinking about it.

Q He told you that?

A Right.

Q What about the next day, the 29th?

A That was it, the morning I come in he says he was really determined this time.

Q On the morning of the 29th?

A Right.

JUDGE NACHMAN: Did he tell you on the morning of the 29th that he had fired Bakowski or that he was really going to do it and hadn't yet done it?

THE WITNESS: He told me he was firing him.

JUDGE NACHMAN: He was going to do it?

THE WITNESS: Right.

Q (By Mr. Dicker) He told you that evening of the 27th that that was it, he was going to fire Bakowski?

JUDGE NACHMAN: No, the evening of the 28th.

THE WITNESS: It was Thursday.

Q (By Mr. Dicker) He told you when you were having a beer, that was it, he was going to fire Bakowski and the next morning he told you again that he was going to fire Bakowski?

A. Yes, that was it.

Q Did he tell you how he was going to go about firing Bakowski?

A. No, sir.

Q Did he tell you anything about calling Bakowski at his home?

A. I remember he was calling him.

JUDGE NACHMAN: Why don't you just answer the question that was asked.

Did he tell you anything about calling Bakowski?

THE WITNESS: Yes.

Q (By Mr.Dicker) What did he tell you, that is, what did Mr. Brower tell you about calling Bakowski in August?

A. All I remember is that he called.

JUDGE NACHMAN: That isn't the question, did he tell you that he was going to call?

THE WITNESS: Yes.

Q (By Mr. Dicker) Did he tell you after he called, did he tell you later on anything about the phone call?

A Ron wasn't home.

MR. LADOV: Objection, we haven't established that he called.

Q (By Mr. Dicker) Did he tell you anything later on about a phone call?

A Yes.

Q He said he was going to call and now I'm asking whether or not Mr. Brower told you anything about a phone call later on that day?

A Yes.

Q What did he tell you?

A He said Ron wasn't home at the time.

Q Did he say what he was going to do then?

A He was going to write a letter.

JUDGE NACHMAN: Did he say that?

THE WITNESS: Yes.

Q (By Mr. Dicker) Do you know of your own knowledge whether he did write a letter?

A Yes.

Q Did he write a letter?

A Yes.

Q How do you know that?

A I know the letter because on the bottom it had like, something like good luck in the future, best regards and it wasn't on the termination notice.

JUDGE NACHMAN: Did you see that letter?

THE WITNESS: That's why I believe that I seen it.

JUDGE NACHMAN: Did you see the letter that Mr. Brower wrote Mr. Bakowski?

THE WITNESS: I can't remember a hundred percent.

Q (By Mr. Dicker) You're not sure?

A I'm not sure.

Q But you do remember something about good luck?

A Yes.

Q The document I have here in my hand, you gave that affidavit to the National Labor Relations Board on October 14th?

A Right.

Q Mr. David Levinson took the affidavit?

A Right.

Q Is this handwiting on the document his?

A Right.

Q You saw him write it?

A Right.

Q How many times did Mr. Levinson call you before you came down to the National Labor Relations Board?

A Two times, I believe.

Q The first time he called, what did he say?

A He just wanted to see me.

Q What did you say?

A I--the first time, I don't remember, sir.

Q Did you agree to go down?

A He wanted a set date and I couldn't specify a date at that time.

JUDGE NACHMAN: The first time he called you all he said to you is that he wanted to see you and he asked you to fix a time that would be convenient?

THE WITNESS: Right.

JUDGE NACHMAN: You told him you couldn't fix it at that time and that was the conversation?

THE WITNESS: I asked him what it was about, I believe.

Q (By Mr. Dicker) What did he say?

A Well,--

MR. LADOV: Objection, is Respondent asking him questions to impeach this witness or is he presenting his affirmative defense?

If he is, it's well beyond the scope of cross examination.

JUDGE NACHMAN: I'm expediting the case by permitting him to do that.

Q (By Mr. Dicker) I have--

JUDGE NACHMAN: The witness asked Mr. Levinson what he wanted to see him about.

Q (By Mr. Dicker) What did Mr. Levinson tell you?

A I can't remember what he said.

Q Then you had a second conversation, was there anything else during the first conversation, telephone conversation?

A I think I mentioned that--well, I had an idea why he was calling, so I just told him why Bakowski was fired, I figured that's why he wanted to see me at that time.

JUDGE NACHMAN: Did he ask anything about Bakowski?

THE WITNESS: I don't remember.

Q (By Mr. Dicker) What about the second conversation?

A We set a time to meet.

Q Did Mr. Levinson say you had to come down to meet him?

A No.

JUDGE NACHMAN: Pursuant to that arrangament you did go down and see him?

THE WITNESS: Yes.

Q (By Mr. Dicker) Are you aware that there became a time when the company let the part-time employees in your store go?

A Yes.

Q About what time was that?

A Middle of September.

Q Did anyone talk to you about that?

A No, sir.

Q Were there part-time employees at the Beck Shoe store when you worked there?

MR. LADOV: Objection, Your Honor.

JUDGE NACHMAN: That's completely irrelevant.

MR. DICKER: May I make an offer of proof?

JUDGE NACHMAN: An offer of proof is improper on cross examination.

MR. DICKER: I have an exception to that ruling, I think an offer of proof is acceptable at any time, Your Honor.

JUDGE NACHMAN: You are entitled to your opinion.

MR. DICKER: I have no further questions of this witness.

JUDGE NACHMAN: Any redirect?

MR. LADOV: Your Honor, I think Mr. Flaherty has clearly established that he has laid his own foundation as to the discharge of Mr. Bakowski, he is both a hostile witness and an adverse witness. A witness identified with the adverse--

JUDGE NACHMAN: Do you have any redirect?

MR. LADOV: May I redirect him under 6(11)(c)?

JUDGE NACHMAN: You go ahead and examine the witness if you want to, if anything shows up that you need leeway, I may give it to you.

MR. DICKER: I have a strenuous objection to that, Your Honor.

JUDGE NACHMAN: I haven't given it to him yet.

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Flaherty, I want to show you a calendar, on Friday, August 29th, Mr. Flaherty, is that the day that Mr. Brower told you he was going to fire Bakowski?

A It was Thursday night, sir.

JUDGE NACHMAN: He told you that twice, he told you Thursday night and he told you again Friday morning.

THE WITNESS: Right.

Q (By Mr. Ladov) What time did he tell you Thursday night?

A About nine thirty.

Q Did you know if he had talked to Mr. Levine about this, did he mention that?

A NO, sir.

Q Do you know if he talked to Mr. Levine the 29th of August?

A I'm not sure.

JUDGE NACHMAN: You mean you don't know whether he did or not?

THE WITNESS: I'm not sure if he did.

JUDGE NACHMAN: Did he, to your knowledge, so far as you know, did he tell it to Mr. Levine?

THE WITNESS: I think he did.

JUDGE NACHMAN: Did he tell you that he had talked to Mr. Levine?

THE WITNESS: No, sir.

Q (By Mr. Ladov) To the best of your knowledge, Mr. Flaherty, as the end of the working day, August 28th, Mr. Bakowski was not fired, is that a correct statement?

A. Yes, sir.

Q Is it a correct statement that on August 29th Mr. Brower asked you about the union?

A. It was either Friday or Saturday,

JUDGE NACHMAN: Thatwould be the 29th or the 30th?

THE WITNESS: The 29th or the 30th.

Q (By Mr. Ladov) You told him that you didn't know anything about the union, right?

A. I told him I wasn't in the union.

Q I show you what has been marked as General Counsel's exhibit number twelve, it's in evidence, to the best of your knowledge, did Mr. Brower write that letter on August 28th, 1975 when you had a beer with him that evening, did he tell you he had written the letter?

MR. DICKER: Objection, there is a question outstanding.

JUDGE NACHMAN: There is a question outstanding, let him answer it.

Q (By Mr. Ladov) To the best of your knowledge, was that letter written on Thursday, August 28th?

A. I don't know, sir.

Q When you had a beer that evening, did Mr. Brower tell you that he had written a letter?

A. NO, sir.

Q To the best of your knowledge, had Mr. Brower called Mr. Bakowski on Thursday, August 28th?

A. NO, sir.

Q All right, Mr. Flaherty, did you have other conversations with Mr. Brower about the union other than the two you have testified to?

JUDGE NACHMAN: How does that go to redirect examination?

MR. LADOV: It goes to, very directly to the discharge of Mr. Bakowski, Your Honor, and motifation for it.

JUDGE NACHMAN: Then I don't understand your question.

MR. LADOV: I'll rephrase the question.

Q (By Mr. Ladov) Did you ever tell Mr. Brower that no one had ever approached you for the union?

MR. DICKER: Objection.

JUDGE NACHMAN: That's part of the direct case.

MR. DICKER: It's also leading.

Q (By Mr. Ladov) Did you ever discuss with Mr. Brower why you had never been approached regarding the union?

MR. DICKER: Objection.

JUDGE NACHMAN: That's part of your direct case, that's not redirect examination.

Mr. Ladov, let's get moving.

MR. LADOV: I have no more questions, Your Honor.

MR. DICKER: Your Honor, I would like to have marked and offer into evidence the affidavit of Mr. Flaherty.

JUDGE NACHMAN: On what basis?

MR. DICKER: On the basis of inconsistent statements.

JUDGE NACHMAN: What is in there that is inconsistent?

MR. DICKER: Their conversation, the dates.

JUDGE NACHMAN: The witness has told you he made a mistake on that.

MR. DICKER: Well, Your Honor, I think it goes to his credibility.

JUDGE NACHMAN: That is no basis for introducing it into evidence, it's only admissible for purposes of impeachment, prior inconsistent statement.

You point out to me what is inconsistent.

MR. DICKER: That he had a beer with him on August 27th.

JUDGE NACHMAN: The witness admitted that he was in error.

MR. DICKER: WEll, I have the offer.

JUDGE NACHMAN: It's rejected.

MR. DICKER: Will that be placed in the rejected exhibit file?

JUDGE NACHMAN Do you want it in the rejected exhibit file?

MR. DICKER: Yes.

JUDGE NACHMAN: All right, you'll have to have it marked.

MR. DICKER: This would be marked REspondent's exhibit eight and it's rejected.

(The document above-referred to
was marked REspondent's exhibit
No. 8 for identification.)

JUDGE NACHMAN: It will become rejected eight and be placed in the rejected exhibit file.

Call your next witness, this witness is excused.

(Witness excused.)

MR. LADOV: I'd like to call James Schneider, please.

Whereupon,

JAMES SCHNEIDER

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

MR. DICKER: I object to Mr. Schneider testifying. I think, I am not sure but as I look behind me, he was in the room during the testimony of Mr. Foreman and Mr. Paranzino, at least, and he is not a named discriminatee.

We had a rule sequestering witnesses yesterday morning and I think the rule was broken this morning.

JUDGE NACHMAN: I don't know whether the witness was in the room or not. You tell me yourself you're not sure.

MR. DICKER: You can ask the General Counsel, I don't know if he'll admit it or not.

MR. LADOV: I understand, Your Honor--

JUDGE NACHMAN: You're being asked a question.

MR. DICKER: I think it's a reasonable question to ask. He is not my witness.

MR. LADOV: Your Honor, I remember turning around, I do not specifically remember if he was in or not, I remember seeing people that I know that were under the sequester order, I walked back and told them all to leave and that was the first time that I had noticed it and I policed it immediately.

MR. DICKER: I request that Your HOnor ask the witness whether he was present?

JUDGE NACHMAN: Mr. Schneider, were you present in the hearing room at any time this morning?

THE WITNESS: Yes, sir, I was.

JUDGE NACHMAN: Were the witnesses on the stand?

THE WITNESS: Yes, sir, Mr. Foreman was testifying.

MR. DICKER: I renew my motion.

JUDGE NACHMAN: All right, what areas do you wish to examine this witness in?

MR. LADOV: I wish to examine this witness regarding his authorization card and various 8(a)(1) alleged in the complaint.

JUDGE NACHMAN: I will permit you to examine the witness with respect to authorization cards, I will permit you to examine the witness with respect to any 8(a)(1) statement in no way connected with Mr. Foreman. Anything that Mr. Foreman testified, this witness --

MR. LADOV: Your Honor, if we--I don't even know if he is going to testify about Mr. Foreman, but yesterday you said that--I attempted to police the first time I saw it. Now, are we going to enforce it completely, are we not going to enforce it, am I going to be penalized in my case if someone comes in here and I am--

JUDGE NACHMAN: May I get something clear with you, I am not arguing with you, I have ruled and you will abide by the ruling.

MR. DICKER: May I have an exception to your ruling, Your Honor?

JUDGE NACHMAN: You have an automatic exception to all adverse rulings.

MR. LADOV: Your Honor, I am going to have this problem with whoever was sitting in the room.

JUDGE NACHMAN: Do you have any questions of this witness?

MR. LADOV: Yes. I do.

JUDGE NACHMAN: Go on.

DIRECT EXAMINATION

Q (By Mr. LaDOV) State your name and address?

A James Schneider, 123 Lower Arrowhead Road, Pittsburgh, PA.

Q By whom are you employed?

A Florsheim Shoe Company.

Q Would you trace your employment history, please?

A Yes, sir, I started May of 1974, then about April or May of '75 I was transferred down to the 200 Fifth Avenue Store. From there I was there until September 20th when I was transferred once again back up to 501 Smithfield Street.

Q Where did you begin your employment?

A 501 Smithfield.

Q So it is your testimony you started at 501 Smithfield?

A Then I was transferred to 200 Fifth Avenue.

Q Then on September 20th transferred back up?

A Yes.

Q What is your job there?

A I'm a salesman.

Q Full-time, part-time?

A Full-time.

Q While you were at the Smithfield Street store, who was your immediate supervisor?

A Mr. Brower.

Q While you worked at the 200 store?

A Mr. Howard Levine.

Q What is your rate of pay?

A I have a base pay of fifty-five dollars a week, plus five percent on Florsheim, three percent on Worthmore and five percent on all accessories.

JUDGE NACHMAN: Are you a full-time employee?

THE WITNESS: Yes, sir.

MR. LADOV: I would like this marked General Counsel's exhibit number twenty.

(The document above-referred to was marked General Counsel's exhibit No. 20 for identification.)

Q (By Mr. Ladov) Mr. Schneider, you have in front of you what is marked as General Counsel's exhibit number twenty, can you identify that?

A Yes, sir, that is the card that I filled out.

JUDGE NACHMAN: Is all the handwritten material in there your handwriting?

THE WITNESS: Yes, sir, it is.

JUDGE MACHMAN: Including the words in the lower part of the card, "Florsheim Shoe Shop"?

THE WITNESS: Yes, sir, that's mine.

Q (By Mr. Ladov) How did you get this card?

A It was given to me by Lou Scott.

Q Is that your signature, Mr. Schneider?

A Yes, sir, it is.

Q Is that the date on which you executed the card?

A Yes, sir.

Q Did you read the whole card, Mr. Schneider?

A Yes, sir, I did.

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

When you say you read the whole card, did that include the small print to the left of your signature in the upper part of the card?

THE WITNESS: Are you referring to Local Union--no, sir.

JUDGE NACHMAN: Your signature is there, to the left of that, the printed material?

THE WITNESS: Yes, sir, I did read that.

MR. DICKER: Your HOnor, may I again renew my objection. This witness was in the room when these very questions were asked of other witnesses.

JUDGE NACHMAN: Objection overruled.

MR. DICKER: My purpose of sequestering the witnesses was to prevent exactly that.

JUDGE NACHMAN: Objeetion overruled.

MR. LADOV: I offer General Counsel's exhibit number twenty into evidence.

JUDGE NACHMAN: Any objection?

MR. DICKER: One question on voir dire, if I might?

JUDGE NACHMAN: All right.

VOIR DIRE EXAMINATION

Q (By Mr. Dicker) Whose pen did you use to fill this out with?

A I believe it was the pen at the store, sir.

JUDGE NACHMAN: That is cross examination.

MR. DICKER: I have an objection to the card, the objection to the card is this witness was sequestered, he heard testimony of other witnesses concerning the signing and execution of the card and has given the identical testimony.

The purpose for sequestering the witness was to prevent exactly that.

JUDGE NACHMAN: The testimony is not identical, the other witness said he did not read it, the objection is overruled, the card will be received.

(The document heretofore marked General Counsel's exhibit No. 20 was received into evidence.)

END OF VOIR DIRE EXAMINATION

Q (By Mr. Ladov) Mr. Schneider, did you give any other employees union authorization cards?

A Yes, sir, I did, I handed them to Jimmy Ball and a little later to Arnold McGonigle.

Q Mr. Schneider, did any members of management ever ask you about the union?

A Yes, sir.

Q Who?

A Mr. Silverhorn.

Q When did he ask you about the union?

A That was September 9th.

Q Did--could you describe the circumstances?

A Yes, sir, Mr. Brien and Mr. Silverhorn had come into town on September, I believe it was the 8th, on the 9th they came to the 200 Fifth Avenue store where I was working at the time. They met with Mr. Levine. Mr. Brien and Mr. Levine were upstairs, Mr. Silverhorn asked me to go downstairs with him so that we could look over the stock.

After we were down there for a few minutes, he asked me what I thought about the union. I said I was for it, then he asked me why and I said it was mostly for more money. He then asked me why I didn't come to him, I said because I knew I wouldn't get it.

Q Did he make any other comments during this conversation?

A Yes, sir, he mentioned the fact, in the New York stores they had been on strike and they had lost more money than they were going to get from their contract. Then he also told me if I had any questions or problems, I should call him and that was the end of the conversation. We went upstairs.

Q Was anyone else present during this conversation?

A NO, sir.

JUDGE NACHMAN: Were the words"Union card" mentioned any time during that conversation?

THE WITNESS: No, sir.

Q (By Mr. Ladov) Did you have any other conversations with any members of management?

A Yes, sir, on the 10th of SEptember.

Q The next day?

A Yes, sir.

Mr. Levine asked me what Mr. Silverhorn had talked to me about and I said the union and that was the end of that conversation.

Then on the 11th, the next day after that Mr. Levine wanted to know why he hadn't been informed about the union and I said it was because he had been on vacation at the time and then he asked me if I had signed a card and I said yes. He asked me if Jimmy Ball and Arnold McGonigle had signed cards and again I said yes.

Then he asked me if everybody was involved in the union, all the stores and I said I thought everyone was involved except for a couple of guys from South Hills Village.

Then he asked me if I knew what was going to happen if we went on strike and I did not give him an answer and that was the end of the conversation.

Q That was Mr. Levine?

A Yes, sir.

Q Where did this conversation take place?

A In his office in the 200 Fifth Avenue store.

Q Was anyone else present?

A NO, sir.

Q Did you have any other occasion to speak with any other managers about the union?

A Yes, sir, one time with Mr. Brower, two times with Mr. Brower.

JUDGE NACHMAN: Could you give the time?

THE WITNESS: That, I belive, was on the 15th or 16th of September, I was meeting them half way with a pair of shoes on Fifth Avenue rather than walk all the way up to the store, we would meet half way. We exchanged shoes and I asked him how the new employee was doing up at the other store and I said I'd be by later with a union card for him and he said he didn't think that would work. I said that was probably why they were brought up here and then he just smiled and left.

Q (By Mr. Ladov) Excuse me, let me clarify this, there was a new employee at the Smithfield Street store?

A Yes, sir.

Q Who was that?

A That was John Fredericks, I believe at the time.

Q He had just started working there?

A Yes, sir.

Q You mentioned a second conversation with Mr. Brower?

A Yes, sir, that was on the 20th, the day I was transferred back to the other store. We had a meeting of the employees, Mr. Brower was present, Bill Flaherty, Ray Wolf and another new employee and Johnny Fredericks.

Q What day was this?

A The 20th of SEptember.

Q Go ahead.

A Mr. Brower explained to us what he thought our duties were going to be and he also told us that he knew that every one of us knew about the union and he didn't want to talk about it here, that was something to be kept outside the store.

Q This was the first day you began working at the Smithfield Street store?

A Yes, sir.

JUDGE NACHMAN: What was the statement, that the union or something was to be kept outside the store?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: What was that statement exactly?

THE WITNESS: He stated that every one of us knew about the union but he didn't want us talking about it up here, it was something to be kept outside.

JUDGE NACHMAN: What do you mean, up here, does that mean in the store?

THE WITNESS: In the store

Q (By Mr. Ladov) Mr. Schneider, I show you what has been marked as General Counsel's--what has been introduced in evidence as General Counsel's exhibit number five, a demand letter from the union to Mr. H. D. Levine and GC#6, the registered card, the receipt, showing the receipt of this letter to H. D. Levine, dated August 29th andsigned by A. McGonigle, have you ever seen them before, either of those?

A I have not seen the letter itself, I have seen the envelop it came in, the card, I saw that because Mr. MCGonigle signed it.

JUDGE NACHMAN: You saw him sign it?

THE WITNESS: Yes, sir, I did.

Q (By Mr. Ladov) You say that on the 29th of August?

A Yes, sir, the day it was delivered, yes, sir. I handed it to Mr. Levine.

Q What did Mr. Levine do with the letter?

A At that point he merely opened it and put it away, in his pocket, that was it.

JUDGE NACHMAN: Let me ask you something, did you hand the letter to Mr. Levine?

THE WITNESS: Yes, sir, I did, I took it downstairs and handed it to him.

JUDGE NACHMAN: You saw him open it and read it?

THE WITNESS: No, sir, I did not see him read it, I saw him open it.

Q (By Mr. Ladov) Did he make any reference to you about this letter?

A No, sir, he did not, he did not mention anything at all to me about the letter at all.

Q Did you ever see again that day any reference to this letter?

A I would think that it was in reference to it, there was a memo on his desk to call Mr. Lou Brien.

Q You say that on the 29th?

A Yes, sir.

Q One more question.

Mr. Schneider, when you worked at the Fifth Avenue Store with Mr. Levine, were you "assistant manager" there?

A THat is--

JUDGE NACHMAN: A matter of opinion, is that it?

THE WITNESS: Yes, a matter of opinion, I did the books and most everything else that would be involved in that, but--

JUDEE NACHMAN: When Mr. Levine had to be away for three or four hours at a time, did he say to somebody, will you look out for things while I;m gone?

THE WITNESS: Yes.

JUDGE NACHMAN: Who did he say that to?

THE WITNESS: He said it to myself and there's times that I wasn't there, as of now, I was down there early, Mr. Macko was there, Mr. Macko was told that.

Q (By Mr. Ladov) Mr. Macko wasn't there in August though?

A NO, sir.

Q You were the only other full-time employee in that store during August?

A Yes, sir.

MR. LADOV: NO further questions.

MR. DICKER: I move to strike the witness' testimony on the ground that he was a sequestered witness that the government allowed in the room.

MR. LADOV: Objection, Your Honor, to the characterization that the government allowed them.

MR. DICKER: I didn't allow them. It's not my witness, I didn't subpoena him.

JUDGE NACHMAN: I didn't get to this problem about the characterization, but the motion is denied.

MR. DICKER: May I have any affidavits, documents that this witness has signed?

JUDGE NACHMAN: While you're reading that, we'll be in recess for ten minutes.

Off the record.

(Short recess was taken.)

JUDGE NACHMAN: On the record.

Cross examine, Mr. Dicker.

CROSS EXAMINATION

Q (By Mr.Dicker) Mr. Schneider, Mr. Scott gave you the union card originally?

A Yes, sir, he did.

Q Did he just give you one or did he give you several?

A There were three cards there.

Q He gave you three cards?

A Yes, sir.

Q He asked you to do something with those cards?

A Yes, sir, he told me that they were for applications, membership to the union and he would like us to read them and sign them.

Q He would like what?

A To read them and sign them.

Q Did you do that in his presence?

A Yes, sir, I did.

Q Now, did Mr. Scott ask you to give the cards to Mr. Ball and Mr. McGonigle?

A Mr. Ball was there at the time. Mr. McGonigle was not, he was there a few days later. He was not working at the time.

Q So Mr. Scott gave the card to Mr. BAll?

A. Yes, sir.

Q He said the same thing to Mr. BAll?

A. Yes, sir.

Q Did Mr. BAll make out the card in his presence?

A. Yes.

Q Did you see MR. Ball read it?

A. Yes, sir.

Q So now your testimony is that Mr. Ball and you read the cards in Mr. Scott's presence and gave them back to Mr. Scott?

A. No, sir, they were handed to me and I mailed them to the union.

Q You mailed them to the union?

A. Yes.

Q Mr. Scott gave you two cards, one for yourself and one for Mr. McGonigle, is that right?

A. Yes, sir.

Q He gave Mr. Ball a card?

A. Yes, sir.

Q He asked you both to read them and fill them out?

A. Yes, sir.

Q In Mr. Scott's presence, both you and Mr. Ball read them and filled them out?

A. Yes, sir.

Q Mr. Ball gave you the card back?

A Yes, sir.

Q Then you subsequently gave the card to Mr. McGonigle?

A Yes, sir.

Q Mr. McGonigle read it in your presence?

A Yes, sir.

Q Did he sign it in your presence?

A Yes.

Q Made it out in your presence?

A Yes, sir.

JUDGE NACHMAN: Then you mailed all the cards to the union?

THE WITNESS: Yes, sir, I mailed Mr. Scott's, Mr. BAll's and myself's on the 13th and Mr. McGonigle's two days later.

Q (By Mr. Dicker) Now, that was about the 13th of August?

A Yes, sir.

Q Is that the first time you heard about the union?

A No, sir.

Q When was the first time?

A About June, sir, I had a conversation.

Q Who talked to you about the union in June?

A Mr. Osselburn.

Q Did anyone else talk to you about the union other than

Mr. Osselburn between June and August 13th?

A. Yes, sir.

Q. Who was that?

A. Mr. Macko and Mr. Scott once again.

Q. So between August and June, between June and August 13th Mr. Macko, Mr. Osselburn and Mr. Scott all spoke to you about the union?

A. Yes, sir.

Q. Did they do it while you were in the store?

A. Yes, sir, for the most part, yes, sir.

Q. By telephone or in person or both?

A. With Mr. Scott it was in person and on the phone with Mr. Macko and Mr. Osselburn it was over the phone.

Q. Was the store manager in the store when you had any of these conversations?

A. During the month of August, no, sir.

Q. How about June and July?

A. June and July, yes, sir.

Q. Now, you said you saw Mr. Silverhorn, Mr. Brien and Mr. Levine meeting on September 9th?

A. Yes, sir, they were in the store when I came in in the morning.

Q. Do you know when Mr. Brien got into Pittsburgh?

A. I believe they arrived on the 8th, sir.

Q. How do you know that?

A I don't know for sure, sir.

JUDGE NACHMAN: You heard talk of that, I suppose?

THE WITNESS: Yes, sir, that and the fact that there was a notice that came from the hotel where they stayed, I believe it was the HIlton, stating a reservation for Mr. Brien.

Q (By Mr. Dicker) You saw that notice?

A I did see the thing come from the hotel, yes, sir.

Q To whom did that notice go?

A Mr. Levine, sir.

Q Did you frequently read Mr. Levine's notices?

A NO, sir.

JUDGE NACHMAN: You're going pretty far off key.

THE WITNESS: It is part of my job to open up mail, though, yes, sir, it was at that time.

Q (By Mr. Dicker) Was it part of your job to open up mail when you saw that registered letter from the union?

A I did not open that, sir.

Q You didn't open it?

A NO, sir.

Q I thought it was part of your job to open mail?

A Not all of it, sir, if it's a registered letter addressed to Mr. Levine specifically, then I do not touch that.

Q Do you know what was inside that envelope?

A. I presume since it was from the union, I presuemed it was notice of them wanting to be our bargaining agent.

JUDGE NACHMAN: You're guessing, you don't know what was in the letter, do you?

THE WITNESS: Well, No, sir, I didn't know.

Q (By Mr. Dicker) Your first meeting with Mr. Silverhorn, he didn't ask you whether you had signed the card, did he?

A. NO, sir, he didnot.

Q Did he ask you why you were in favor of the union?

A. Yes, sir.

Q And you told him?

A. Yes, sir.

Q And the next day Mr. Levine asked you what you spoke to Mr. Silverhorn about?

A. Yes, sir.

Q You told him about theunion?

A. I just said the union, that was all, sir.

Q What did Mr. Levine say?

A. Nothing, sir, that was the end of the conversation.

Q The following day, September 11th, your testimony is that Mr. Levine asked why he wasn't informed about the union?

A. Yes, sir.

Q You told him he was on vacation?

A. Yes, sir.

Q When was Mr. Levine on vacation?

A He started I believe it was the first of August and he came back early, he came back, I'm not sure of thedate. If I could look at this calendar, sir?

Q Sure.

A He was in the store on the 25th, sir, that was the morning he was there.

JUDGE NACHMAN: That was his first day after returning from vacation?

THE WITNESS: Yes, sir.

Q (By Mr. Dicker) Mr. Levine asked you whether you had signed the card?

A Yes, sir, he did.

Q A few days later you were exchanging shoes with Mr. Brower?

A Yes, sir.

Q YOu asked Mr. Brower about you giving cards to the new employees in his store?

A I said that I would be up later with the employee card, excuse me, an application for the union and he said he didn't think that would work.

Q You said you would be up with an application?

A Yes, sir.

Q Has anyone in Florsheim told you you were going to be fired?

September concerning his employment?

A. Yes, sir.

Q. About when was that conversation?

A. I would believe it was probably around possibly the second or third, either the first two days of this week--

Q. The second or third or ninth or tenth?

A. Yes, sir, I'm not exactly sure what days they were.

Q. What did Mr. McGonigle say to you?

A. He said that he might have to be let go because Mr. Levine couldn't work enough hours.

Q. Now, let's go to September 20th, there was a meeting in the store of all the employees, is that right?

A. Yes, sir.

Q. I assume Mr. Brower called that meeting?

A. Yes,sir, he did.

Q. Would you tell me, does that store have a storeroom or a stockroom downstairs?

A. Yes, sir, it does.

Q. And selling floor upstairs?

A. Yes, selling floor upstairs and also a stockroom upstairs.

Q. In the back?

A. Yes, sir.

Q. What did Mr. Brower say at that meeting?

A. Well, he explained our duties.

Q. What do you mean, explained your duties?

A No, sir.

Q Has anyone threatened you with discharge?

A No, sir.

Q You had a subsequent meeting with Mr. Holmes about the 18th of SEptember?

A Yes, sir.

Q Where did that meeting occur?

A That was in the 200 Fifth Avenue store, sir.

Q How long did that meeting take?

A Just about maybe five minutes.

Q During that time did he talk to you about the union?

A No, sir, I brought itup myself.

Q How did you bring it up?

A I asked him if he was here because of the union and he said no.

Q Did he say he knew anything about the union?

A No, sir, he said he didn't know anything about the union, he said I probably knew more about it than he did.

Q Did he say why he was here?

A He said to promote sales, sir.

Q Did he say that the sales in Pittsburgh were down?

A No, sir.

Q He just said he was there to promote sales?

A Yes, sir.

Q Did you have a conversation with Mr. McGonigle in early

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A He wanted us to make sure that the store was kept clean at all times and more or less he assigned different things for us to do, one person to take care of the hose table and such and another one to take care of displayand another one to run stock and so forth, that sort of thing.

Q What else did he say?

A Then after the end, after that part he mentioned the part about the union. He said we all knew about the union and he didn't want any talk of it up here at the store. That was something to be kept outside.

Q He didn't want any part of it up here at this store?

A Yes,sir, at that store.

Q What was he referring to?

A Any talk of the union, sir.

Q By"up here", was he referring to the selling area, did you understand him to mean the selling area?

MR. LADOV: Objection, Your Honor.

JUDGE NACHMAN: It's cross examination.

MR. LADOV: It's asking for an opinion.

MR. DICKER: No, I didn't ask for an opinion.

THE WITNESS: I understood him to mean the whole store, sir.

Q (By Mr. Dicker) Includingdownstairs?

A Yes, sir.

Q But he did use the words, "I don't want any talk about the union up here!?

A Yes, sir.

Q When the registered letter came, were you in the store?

A Yes, sir, I was.

Q Was Mr. Levine in the store?

A Yes, sir, he was downstairs in his office.

Q Did anyone call Mr. Levine and say there is a registered letter here for you?

A No, sir.

Q About what time of the day was that?

A It was in the morning, sir. Thatwould have been about, I would presume ten o'clock, ten thirty.

Q Does Mr. McGonigle work in the morning?

A Yes, sir, on some mornings he was available to work.

Q And he worked on Friday morning, the 29th?

A Yes, sir.

Q Are you sure it was the morning?

A Yes, sir, because that's when the mail was delivered.

Q How come Mr. McGonigle signed for this letter rather than you?

A Because I was probably busy with something at the time, I don't remember exactly.

Q Weren't you there when the letter came?

A Yes, sir.

Q You remember that, but You don't remember whether you were busy?

A I might have had a customer at the time, sir.

Q You might have?

A I don't remember off hand.

Q Did this letter come with the rest of the mail or did it come specially, separately?

A I don't remember, sir.

Q The mail had been earlier, could it have been delivered on latter in the day?

JUDGE NACHMAN: I can answer that for you, it could have happened.

MR. DICKER: I think on cross examination I'm allowed a little leeway, Your Honor.

JUDGE NACHMAN: I think you're going very far afield.

MR. DICKER: I didn't develop this testimony concerning the letter, it was direct examination.

JUDGE NACHMAN: Continue with your cross examination.

The important question is, did it get to Mr. Levine and how?

MR. DICKER: And when.

JUDGE NACHMAN: And when.

MR. DICKER: THat's one of the things I'm trying to establish.

JUDGE NACHMAN: It was signed for in the morning, this witness has testified.

The witness has testified he forthwith took it downstairs and handed it to Mr. Levine. You can examine him in that area if you want to.

MR. DICKER: I was attempting to examine the witness on his credibility of when that letter arrived. Apparently, I'm not going to be allowed to do that.

JUDGE NACHMAN: If you have any questions, you ask the witness.

MR. DICKER: I have no further questions of this witness, Your Honor.

JUDGE NACHMAN: Any redirect?

MR. LADOV: Just a few, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. Schneider, where is the Smithfield store located exactly?

A Right on the corner, sir, of Fifth and Smithfield, Fifth Avenue and Smithfield Street.

Q Where is the Fifth Avenue Store located?

A 200 Fifth AVenue, it's on the corner of Fifth Avenue and Market.

JUDGE NACHMAN: How far apart are they?

THE WITNESS: Two blocks.

Q (By Mr. Ladov) Which direction regarding downtown Pittsburgh is the FIfth Avenue store?

MR. DICKER: Objection.

JUDGE NACHMAN: I don't see any relevance, you're going very far afield.

MR. LADOV: Your Honor, I am trying to bring out the words "up here" and I have to do it with the geography of downtown Pittsburgh.

MR. DICKER: Now he's letting the witness know what answer he wants.

JUDGE NACHMAN: I don't think that's material.

MR. LADOV: All right, then I have no further questions.

MR. DICKER: Let the record show that I am returning the affidavit of Mr. Schneider to the Board.

JUDGE NACHMAN: Witness excused.

(Witness excused.)

JUDGE NACHMAN: CAll your next witness.

MR. LADOV: I call Arnold McGonigle,please.

Whereupon,

ARNOLD McGONIGLE

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ladov) Would you state your name and address?

A Arnold H. McGonigle, I live at 3015 Brownsville Road, Pittsburgh, PA.

Q Were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Would you trace your employment history with Florsheim?

A I started in March of 1975 as a part-time salesman, up until September 18th, 1975.

Q Where did you work?

A 200 Fifth Avenue.

Q When you applied for a job, did you apply for a part-time job?

A I spoke directly to Mr. Levine about a part-time job and he interviewed me and hired me.

Q What was your regular schedule, Mr. McGonigle?

A Normally it was about seventeen hours a week, I worked Monday evenings, Thursdays and all day Saturday.

Q Do you have any other full-time job?

A No, at the present and at that time I am a student at California State College.

Q Full-time?

A Full-time student.

Q Did you inform Mr. Levine of that at the time you applied?

A Yes, I did.

Q What was your rate of pay, Mr. McGonigle?

A A Dollar an hour and the commission was 5, 3 and 5.

Q Did you ever learn about the employees' efforts to organize a union at Florsheim?

A The first time I heard about it was mid-August, Jimmy Schneider approached me and he had some information about the union and he had an application card and he had asked me if I would be interested in joining.

Q What did you tell him?

A At that time I said yes and I filled out the card and signed it and gave it back to him.

Q Where did this occur?

A This occurred down at 200 Fifth Avenue in the small stockroom in the back.

JUDGE NACHMAN: On the main floor?

THE WITNESS: Right, it's on the main floor, but it's in the back.

MR. LADOV: I'd like this marked as General Counsel's exhibit number twenty one.

(The document above-referred to was marked General Counsel's exhibit No. 21 for identification.)

Q (By Mr. Ladov) Mr. McGonigle, I show you what's been marked as General Counsel's exhibit number twenty one, can you identify that?

A Yes, this is the card that James Schneider handed to me and I read and signed.

Q Is that your signature?

A That is my signature, right.

Q Can you identify the date on that card?

A Yes, the 25th of August.

Q Is that the day you executed this card?

A Yes.

JUDGE NACHMAN: Is all of the handwritten material on that card in your handwriting?

THE WITNESS: Everything on the card is in my handwriting.

MR. LADOV: I offer General Counsel's exhibit number twenty one into evidence.

JUDGE NACHMAN: Did you read this card before you signed it?

THE WITNESS: Yes.

JUDGE NACHMAN: All of it?

THE WITNESS: The entire card.

JUDGE NACHMAN: How about the legend just to the left of your signature?

THE WITNESS: Yes, sir, I read that.

JUDGE NACHMAN: Before you signed it?

THE WITNESS: Right.

MR. DICKER: No objection.

JUDGE NACHMAN: GC#21 will be received.

(The document heretofore marked

General Counsel's exhibit No. 21
was received into evidence.)

Q (By Mr. Ladov) Mr. McGonigle, Mr. Levine is your supervisor?

A My immediate supervisor, yes.

Q Did he ever ask you about the union?

A On one occasion--well, it was on the 8th of September.

Q Would you describe what happened?

A I came to work and as soon as I came in Jimmy Schneider told me that Mr. Levine wanted to see me down in his office, which was downstairs. So I went down and I sat down, Mr. Levine came directly out and asked me if I had signed the union representation card. I told him I did.

He then asked me if I had attended the meeting and I said I had attended the meeting and he then said that I should have asked his advice before doing something like that. I had no reply to that.

Then he proceeded to say something about my new schedule in September. It was during this time that I was coming from summerschool into the fall term, so my schedule changed. He said that it didn't seem like it was going to work out. He also mentioned Jimmy Ball at the same time because Jimmy's schedule was changing too.

Q What did he mean by "work out"?

A Not fitting into his set up as far as the time available that I would be there. He mentioned something about he's trying to work them out but he doesn't think that he could.

He also mentioned, he asked me about who was at the meeting and I mentioned Jimmy Schneider and some of the men from the 501 Fifth Avenue store, the other people I didn't know.

Then he also asked me something about what the men wanted and I said more money and that was about the end of the conversation, there was nothing elsesaid after that.

Q Did you ever attend a uniøn meeting?

A Yes, I went to the meeting on September 4th, it was after work, in the evening, around nine thirty or so.

Q You testified you were discharged on September 18th?

A That's correct.

Q Could you describe the circumstances surrounding your discharge, please?

A I came to work, it was about quarter to four because I was supposed to start at four o'clock.

JUDGE NACHMAN: On September 18th?

THE WITNESS: Right.

Mr. Levine told me to have a seat. Then he came over, he began by, he said as a formality I have to ask you, can you work full-time in which I replied I'm attending school full-time so it would be impossible for me to do so.

Then he said that he had received a directive from the company the day before stating something about they were no longergoing to employ part-time people as of that date, September 18th.

Q (By Mr. Ladov) Was there anything else in this conversation?

A I'm trying to recall, I had said something about the fact that I don't see how they could get by without part-time people. Upon that reply he just said that he had to follow the directive and he was pleased with my performance and if I needed any recommendations, he would be glad to accommodate me or reply.

Q Mr. McGonigle, was that the first time, September 18th conversation, that you had ever heard about getting rid of part-time employees?

A That was the very first time.

Q Was that the first time you had ever heard about you not going to be working anymore?

A No, there was an occasion thathappened after the 8th, when I left the office, talking with Mr. Levine. I had a doubt in my mind whether I was going to be either retained or laid off, so on that following Thursday, it was in the evening, I had asked him directly if I was going to be laid off or retained and he came back with the answer that if I was in your shoes, I would start looking for another job. That was it, that was on the other occasion that I talked with Mr. Levine.

Q Then on September 18th you were told that you were being dismissed?

A On the 18th that was it.

Q At the time of your hire in March of 1975 did Mr. Levine ever mention the company's intention to eliminate part-time employees?

A No.

MR. LADOV: No further questions, Your Honor.

MR. DICKER: May I ask the Board to produce any affidavits or documents that this witness may have given?

May I have a few moments?

JUDGE NACHMAN: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) You are a full-time college student at what college?

A California State College in California, PA.

Q When you first started working with Florsheim you worked seventeen hours a week beginning in March of 1975?

A That was normal hours, about seventeen a week.

Q In the summer did you work more hours?

A It came up to about twenty five, I believe, in the summer.

Q When did you return to college in the fall?

A Started at the beginning of September, the registration on the 1st, 2nd and 3rd, school began on the 4th.

Q Registration was on Labor Day, September 1st?

A No.

Q When did you start your new schedule at Florsheim?

A That began immediately when I went back to school, what happened was that last week in August I was out of school completely so I worked more hours and then it switched right over when I went back to my fall schedule.

Q When did you start classes?

A Classes started on the--I believe it was a Friday, the first class might have been a Friday or it might have been the following Monday.

Q The first week or second week in September?

A First week.

Q Was Mr. Levine on vacation?

A He was on vacation from the beginning of August up until the third week, he came back on the fourth week. He was gone mostly the whole entire, he was supposed to be gone the entire month, but he came back early.

Q He came back the last week of August?

A Right.

Q When did you give him your new schedule, when did you work out your new schedule with him?

A During that week I presented a schedule to him because I had it worked out somewhat. You really don't know what courses you are going to get in the fall, but I gave him the tentative schedule.

Q When?

A That was during that week.

Q The week of the 25th?

A Right.

Q By that time you had already signed the card?

A I signed the card on the 25th, yes.

Q Now, you do remember, Mr. McGonigle, signing for a registered letter on the 29th?

A Yes, Ido.

Q Was that in the morning or the afternoon?

A That was about eleven o'clock, toward the afternoon.

Q Could it have been after lunch?

A I don't believe it was after lunch, no.

Q Are you sure?

A I'm not positive, but I have more feeling that it was towards the late part of the morning.

Q What happened after you got the letter?

A After I got the letter I put it where I normally put the mail, on the desk, on the side.

JUDGE NACHMAN: That's not a private desk?

THE WITNESS: It's a counter where we do most of the money exchange.

Q (By Mr. Dicker) Wrap shoes there and--

A Right.

Q When--do you remember Mr. Levine picking up the mail or getting the mail that day?

A Normally mail comes after lunch.

Q Normally mail comes after lunch?

A Yes, usually when I was there, usually it came after lunch.

Q What happened to this letter that was on the side?

A Jimmy Schneider took it down to Mr. Levine.

Q About what time was that?

A About the same time.

Q When you put it on the side, he picked it right up?

A Well, at the time the letter came, he was working with a customer and I had just finished with a customer. I just put the letter down.

Q Now, did you work on Saturday, the 30th?

A Yes.

Q Did Mr. Levine speak to you about the union on Saturday, the 30th?

A No, the only time he spoke to me--

Q Just answer the question.

When was the next day you worked, take a look at this calendar, did you work Wednesday the 3rd or Thursday the 4th?

A Registration would be either the 2nd or the 3rd, I couldn't be there so I probably worked the 4th, which would be Thursday night.

Q Did Mr. Levine talk to you about the union then?

A No.

Q What about, did you work on the 5th?

A No.

Q Did you work on Saturday, the 6th?

A Yes.

Q Was Mr. Levine in the store?

A He is not there on Saturdays.

Q Was the--was he there on this Saturday?

A No, not that I know of.

Q Do you know or you don't remember?

A I could say he wasn't there.

Q What about the 4th, was he there on the 4th, Thursday the 4th, that evening?

A Yes.

Q Then you worked again on MOnday, the 8th?

A Right.

Q You worked in the morning or the afternoon that day?

A I came in about two o'clock.

Q When did normally come in?

A With the new schedule it'd start, supposed to be there anywhere from one thirty to two o'clock.

Q What about August, what hours did you work in August?

A It was about the same time except a couple of days I was coming in moreoften because Jimmy Ball either couldn't make it because he was playing baseball or someting.

Q What do you mean, more often?

A Well, through the summer, I was finished at twelve o'clock so whenever I'd ask Mr. Levine if he ever needed me just to let me know and I would come in whenever he needed me.

Q So during the month of August you came in as early as what time, one o'clock or so?

A It takes about an hour or an hour and fifteen minutes to get here from California, so I usually started about one thirty, two o'clock when I did come in.

Q On the 8th you saw Mr. Levine when, in the afternoon?

A As soon as I came in.

Q What time was that?

A About two o'clock.

Q Well, the first thing he asked you, someone sent you downstairs?

A Yes, Jimmy Schneider said Mr. Levine wanted to see me downstairs in his office.

Q He asked you to sit down?

A. Right, I sat down.

Q. Then he said to you, well, tell us what he said to you?

A. He had asked me if I had signed a union representation card.

Q. Is that the first thing he said to you?

A. First thing.

Q. Very first?

A. Yes.

Q. You told him?

A. I told him I did.

Q. Did you attend the union meeting on September 4th?

A. Yes, I did.

Q. During that union meeting on September 4th, was there any discussion as to what you should say or do if a question about union representation was ever asked you?

A. I remember Mr. Best saying something about the company would probably ask you if you had signed a card or if you had gone to a meeting, which they did.

Q. What did Mr. Best advise you to answer?

A. He said answer truthfully if they ask you.

Q. Didn't he also say anything else?

A. No.

Q. Didn't he tell you to then tell the company that they were committing an unfair labor practice or violating the law?

A No.

Q Mr. Best didn't say that?

A No.

Q After he asked you if you signed a card, he also asked you if you attended the meeting?

A Yes.

Q You answered in the affirmative, right?

A Yes.

Q Then he said to you that you should have asked him for advice, for his advice?

A Right.

Q You didn't answer that?

A No.

Q Is that the point he started talking about the September schedule?

A He brought in the September schedule then.

Q At that point?

A Right.

Q Did he appear to you to be angry?

A No.

Q The rest of the meeting he talked about the problem of working out your September schedule?

A He was trying to work it out he said, but it didn't seem like it was possible.

Q Then the next day you asked him about, you told him you didn't think it was possible?

A. Right.

Q. The next day you asked him about whether or not he thought the schedule would work out?

A. The next day?

Q. Or a day or so later?

A. NO, the only time I talked to him next was the following Thursday evening which was the 11th I believe, I'- not sure. That evening.

Q. What did you talk to him about then?

A. I wasn't sure whether I was going to be laid off or kept on so I directly asked him. He came back with that answer.

Q. You directly asked him what, whether your schedule would work out?

A. No, I just asked him if he was going to retain me or lay me off.

Q. He had told you on the 4th--excuse me, he had told you on the 8th, did he not, that the schedule--he didn't know whether your schedule would work out?

A. Right.

Q. Did he tell you on the 8th what would happen if your schedule didn't work out?

A. No.

Q. Then on the 11th you spoke to him again the following

Thursday evening and you didn't ask him whether or not he thought your schedule would work out?

A. No, I just directly asked him if he was going to lay me off or retain me.

Q. Did he tell you before he was going to lay you off if your schedule didn't work out?

A. no.

Q. Never said that?

A. No.

Q. You didn't think to ask him about whether or not--

MR. LADOV: Objection about what he thought to ask him.

MR. DICKER: I'll withdraw the question.

Q. (By Mr. Dicker) Then you were called in on the 18th, you came to work on the 18th and Mr. Levine was there, is that right?

A. Right.

Q. Was there anyone else there?

A. Jimmy Schneider was there and I believe I saw James Ball and there was a black guy there, I don't know who he was.

Q. Were any other company representative there?

A. No.

Q. About what time was this?

A. About quarter til four.

Q Mr. Levine said that this is a formality, but I have to ask you if you can work full-time?

A He says as a formality I have to ask you if you can work full-time.

Q He said as a formality?

A Yes.

Q You are sure of that?

A Positive, yes.

Q You told him you couldn't work full-time?

A He already knew it because I was attending school.

JUDGE NACHMAN: Just answer, did you tell him that you couldn't work full-time?

THE WITNESS: Yes, I did, I told him I couldn't work full-time.

Q (By Mr. Dicker) He told you you were a good employee and he'd give you a recommendation?

A Right.

Q Did he mention anything about the union at that time?

A Nothing was said about union.

Q Let me take you to February 13, 1976, do you remember receiving a phone call from Mr. Levine in February of 1976? This February?

A No.

JUDGE NACHMAN: Less than a month ago?

THE WITNESS: No phone calls.

Q (By Mr. Dicker) Did you receive a call from any company official during February, 1976, Florsheim official?

A No, sir.

Q What about in January of 1976--strike that.

In December, last December, did any Florsheim--did Mr. Levine call you?

A In December?

Q Yes.

A No, sir.

Q Did any company offical call you during December, 1975?

A Not that I know of, sir.

MR. DICKER: No further questions.

REDIRECT EXAMINATION

Q (By Mr. Ladov) Mr. McGonigle, on September 18th, at the time you were told of your layoff, did Mr. Levine ever tell you that he knew you couldn't work full-time?

MR. DICKER: Objection, leading the witness.

JUDGE NACHMAN: Overruled.

THE WITNESS: He did make the statement referring to--well, he knew this when he hired me and he had said--

JUDGE NACHMAN: The question is, did he make such a statement to you?

THE WITNESS: Yes, he did .

MR. DICKER: I have a strong objection, this witness was asked the question three times on direct and on cross examination as to what that conversation was and now when he's being lead on redirect, the answer being given to him he's allowed to answer, I think that's highly improper, Your Honor.

JUDGE NACHMAN: I have overruled your objection.

MR. DICKER: I want the reasons for my objection on the record.

MR. LADOV: No more questions, sir.

JUDGE NACHMAN: Thank you.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: May the record show, I am returning the affidavit of Mr. McGonigle furnished to me.

MR. LADOV: I call Mr. O'Neil, please.

Whereupon,

TERRY O'NEIL

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

MR. DICKER: I would request also, Your Honor, Mr. O'Neil was present in the hearing room during the first and second witnesses this morning.

JUDGE NACHMAN: Mr. O'Neil, were you present in the hearing room this morning when Mr. Foreman or Mr. Paranzino testified?

THE WITNESS: No, I wasn't, sir.

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address, please.

A Terry O'Neil, 2760 Ohio Street, Bethal Park, PA.

Q Were you ever employed by Florsheim Shoes?

A Yes, I was.

Q Could you describe your employment history at Florsheim, please?

A I started in May of 1973 until last week, which was Tuesday, February 25th.

JUDGE NACHMAN: 1976?

THE WITNESS: 1976.

JUDGE NACHMAN: Were you a full-time employee?

THE WITNESS: Yes.

Q (By Mr. Ladov) Where?

A South Hills Village.

Q Who was your immediate supervisor at the South Hills Village store?

A Roy K. Rosenberry.

Q Mr. O'Neil, did you ever learn of the employees' efforts to organize a union at Florsheim?

A Yes, I did.

Q Could you describe for the Judge how you learned that?

A I learned around August from a phone call to the store which I got a message and then I gave the call back to Monroeville Mall, I believe. I had talked to a guy by the name of George and he had told me that he would send me some information regarding the union.

JUDGE NACHMAN: Is George also a Florsheim employee?

THE WITNESS: Yes, he was.

He said that he would send me someinformation through the Local Retail Union regarding, you know, the union forms.

Q (By Mr. Ladov) Anything else during that conversation?

A No, that was about the extent of it.

Q Mr. O'Neil, did you ever receive an authorization card at any time, a union authorization card?

A Yes, I did.

Q How did you get it?

A I got it in the mail.

Q From whom?

A From the Local REtail Union.

MR. LADOV: Mark this General Counsel's exhibit number twenty two.

(The document above-referred to was marked General Counsel's exhibit No. 22 for identification.)

Q (By Mr. Ladov) Mr. O'Neil, I show you what has been marked as General Counsel's exhibit number twenty two, can you identify that?

A. Yes, I can.

Q. What is it?

A. That's the application fee for the union.

Q. Is that your signature on that card?

A. Yes, it is.

Q. Is that the date which you executed this card?

A. Yes, it is, sir.

Q. Did you read the card before you executed it?

A. Yes, I did.

Q. After you signed the card, what did you do with it?

A. I mailed it.

JUDGE NACHMAN: Is the handwritten material on this card in your handwriting?

THE WITNESS: Yes, it is, sir.

JUDGE NACHMAN: Everything?

THE WITNESS: Yes, it is.

JUDEE NACHMAN: When you read it, tell me whether or not you read that portion which is to the left of your signature? I mean your signature is right here in the upper part?

THE WITNESS: Yes, I did.

Q (By Mr. Ladov) How did you receive this card?

JUDGE NACHMAN: He said he received it in the mail.

MR. LADOV: Fine, I offer General Counsel's exhibit number twenty two.

JUDGE NACHMAN: What did you do with the card after you signed it?

THE WITNESS: Right after I signed it I did place it in the envelope in the mail, which was addressed to the Local REtail Union.

JUDGE NACHMAN: You mailed it back to them?

THE WITNESS: Yes, I did.

MR. DICKER: No objection.

JUDGE NACHMAN: GC#22 will be received.

(The document heretofore marked General Counsel's exhibit No. 22 was received into evidence.)

Q (By Mr. Ladov) Did any members of management of Florsheim ever ask you about the union?

A. Yes, sir, they did.

Q Who?

A. Mr. Silverhorn had asked me some questions.

Q When?

A. This was around September, I guess September 9th or 10th, around those dates there.

Q Would you describe the circumstances about Mr. Silverhorn asking you questions?

JUDGE NACHMAN: When it took place, where it took place, who was present?

THE WITNESS: I was in the back room, Mr. Silverhorn and Mr. Brien had come in to town. Mr. Silverhorn had taken me in the back room, in the stockroom and had asked me my feelings on the union.

JUDGE NACHMAN: Anyone else there when he asked you that question?

THE WITNESS: No, sir.

JUDGE NACHMAN: On what day this occurred, September 9th or 10th?

THE WITNESS: I believe so.

Q (By Mr. Ladov) Where were Mr. Brien and Mr. Levine?

A I believe they were out front at the time, now Mr. Silverhorn and myself were in the back.

Q What did you respond to Mr. Silverhorn?

A I had reconsidered my vote for the union and I decided to withdraw my application, which I had called into the--

Q What did you tell Mr. Silverhorn?

A I told Mr. Silverhorn that I wasn't interested in the union and that I felt that at the present it wouldn't benefit me.

Q Was there anything else in the conversation?

A Not that I can recall.

Q You have testified you signed this card on August 28th, 1975?

A Yes, sir.

Q Now, you told Mr. Silverhorn that you were no longer interested in the union?

A Right.

Q And did you call Local 1407?

A Yes, I did. I had called them and requested that my application be withdrawn.

Q When did you do this?

A I think it was at maximum a week after I had signed it in.

JUDGE NACHMAN: That was before your conversation with Mr. Silverhorn?

THE WITNESS: Yes, sir.

Q (By Mr. Ladov) Was it after September 2nd, 1975?

A I would believe so.

Q Mr. O'Neil, on September 9th when Mr. Silverhorn asked you about the union, did you know who he was?

A Yes, I did.

Q Who was he, you knew who he was?

A Right.

Q Did you know who Mr. Brien was?

A Yes, I did.

Q When he was in the store at that time?

A Yes, sir.

Q How long had you worked for Florsheim prior to leaving the company in February?

A It was about two years and probably about eight months or so.

Q Did you know that Mr. Brien was in charge of all the stores across the country?

A Yes, I did.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: I call upon the Board to supply any affidavits that the witness may have adopted.

MS. KRIEGER: The Board does not have any.

JUDGE NACHMAN: Let the record show that the Board has no statements from this witness.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. O'Neil, you said you received a phone call from a George in the middle of August?

A Yes, sir.

Q Do you know his last name?

A I believe it's Macko.

Q He called you and said what?

A He had called me about, they were trying to start a union and he asked me if I might be interested and that he would further send me information through the Local.

Q Was that the full extent of your conversation?

A. That was all.

Q. And you told him, okay, send the form or send the information?

A. Right.

Q. Then you got the information in the mail?

A. Yes, sir, I did.

Q. What did you get in the mail besides the card?

A. Later I had, right then, that's all I had received.

Q. Just the card?

A. There might have been another form letter inside there, but I really can't recall right now to tell you the truth.

Q. Did you read that form letter?

A. I believe I did, I;m sure there was a form letter in there.

Q. What did the form letter say?

A. I can't recall.

Q. In substance you can't recall?

A. No.

[illegible] Are you sure you read it?

A. I'm sure I read it.

Q. Are you also sure, Mr. O'Neil, that you read the material immediately tothe left of your signature on this card?

A. I'm definitely sure I read that.

Q Before you signed the card?

A Yes, sir.

Q So on the basis of your telephone conversation with Mr. Macko who told you that they were trying to form a union and on the basis of the card and the form letter, you decided you would join the union?

A Yes, sir.

Q And you signed the card and sent it in?

A Yes, sir.

Q The card is dated the 28th, is that the day you mailed it into the union?

A It was either that day or maybe the day after.

Q The 28th or 29th?

A Right.

Q When did you change your mind about the union?

A Well, it was during that week that I had thought about it and it was probably like I said, it would have to be a week at maximum.

Q I'm not asking you when you called the union to tell them that you wanted the cardback, I am asking you when you in your own mind decided that you did not want--that you wanted to get the card back?

A I would have to say it was some time within that week after, the date doesn't exactly come to me.

Q Now, you worked every day in the first week of--excuse me, did you work Monday, Labor Day, was the store open?

A. I believe it was open, I'm not sure if I worked that day or not.

Q. But during that week you would have worked three or four of those days?

A. Yes, sir.

Q. Full-time?

A. Full-time.

Q. During any of those days did anyone talk to you about the union?

A. No, sir.

Q. Did you call the union and ask for the card back?

A. Yes, I did.

Q. Did you everget it back?

A. NO, I didn't.

Q. Mr. Silverhorn spoke to you on September 9th or September 10th?

A. Yes, sir, I believe it was one of those days.

Q. Mr. Brien and Mr. Silverhorn, did they both come into the store?

A. Yes.

Q. Both said hello to you?

A. Yes, they did.

Q. And Mr. Silverhorn and youwent to what, a stockroom or backroom?

A. In the stockroom, right.

Q Did he ask you, well, he asked you what your feelings were about the union?

A Yes, sir.

Q Did he ask you first whether you knew about the union?

A I don't recall actually if he said that, but I do recall him saying what exactly do you feel about the union.

Q And you said what?

A I felt that at the present it really wasn't in my best interest and I had decided not to go with the union and I was just withdrawing my union vote.

Q Did you tell that to Mr. Silverhorn?

A I believe I did.

Q Was there anything else in the conversation?

A NO, that was about all, it really wasn't a long conversation.

MR. DICKER: No further questions.

MR. LADOV: No questions, Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

JUDGE NACHMAN: We will adjourn at thistime until one o'clock.

Off the record.

(Whereupon, at 12:20 o'clock p.m. the hearing in the above matter was adjourned to reconvene at 1:00 o'clock p.m.)

AFTERNOON SESSION

1:00 p.m.

JUDGE NACHMAN: On the record.

CAll your next witness.

MR. LADOV: I call Andrew Halliday, please.

Whereupon,

ANDREW HALLIDAY

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address.

A Andrew Halliday, I live at R.D.#1, Velancia, PA.

Q Were you ever employed by Florsheim Shoes?

A Yes, sir, I was employed December, 1971, I was terminated September 18th, 1975.

Q Where did you work?

A I worked at the Northway Mall Store, I also worked one day at the MOnroeville Mall Store.

Q What was your job while you worked for Florsheim?

A At first I was "assistant manager", I received the same pay as a salesman or part-time employee or whatever. Then I got a better job, which I was glad to take, and I became just a part-time employee.

Q How long had you worked as a part-time salesman at the

Northway Mall?

A. Since January 1973.

JUDGE NACHMAN: That's when you became part-time?

THE WITNESS: Yes.

Q (By Mr. Ladov) Who was your immediate supervisor?

A. At first it was Roy Rosenberry, then it became James Holleran.

Q As a part-time salesman, what was your schedule, generally?

A. It actually varied from week to week. When I was terminated it was Monday and Wednesdays from five thirty to nine thirty.

Q What was your rate of pay?

A. Dollar an hour plus five percent commission on Florsheim and accessories, three percent on Worthmore.

Q Mr. Halliday, did you ever learn about the employees' efforts to organize aunion at Florsheim?

A. Yes, I was telephoned by Joe Osselburn from Monroeville on August 27th.

Q What did Mr. Osselburn say?

A. He asked me if I was interested in joining the union and I said I was. He said that he would send Bob Belesky over with some cards for us to fill out and sign and he did.

Q Did Mr. Belesky come over that evening?

A. Yes, he was over there that evening.

MR. LADOV: Would you mark this General Counsel's exhibit number twenty three.

(The document above-referred to was marked General Counsel's exhibit No. 23 for identification.)

Q (By Mr. Ladov) Mr. Halliday, I show you what has been marked as General Counsel's exhibit number twenty three, can you identify that, please?

A. Yes, this is the card ~~tht~~ I signed on the 27th of August.

Q Who gave you that card?

A. Bob Belesky.

Q Is that your signature?

A. Yes, sir.

Q Is that the date which you executed this card?

A. Yes, sir.

Q Did you read the card before you signed it?

A. Yes, sir.

JUDGE NACHMAN: All of it?

THE WITNESS: Yes, sir, everything, even this little part over here on the left.

Q (By Mr. Ladov) What did you do after you signed it?

A. I returned it to Mr. Belesky and he took it with him when he left.

MR. LADOV: I offer General Counsel's exhibit number twenty three into evidence.

MR. DICKER: N o objection.

JUDGE NACHMAN: GC#23 will be received.

(The document heretofore marked General Counsel's exhibit No. 23 was received into evidence.)

Q (By Mr. Ladov) Mr. Halliday, did you solicit any other employees to sign union authorization cards?

A. Yes, I called Bill Messenger on the phone, same day as I had signed.

Q Would you relate the conversation--did you speak with Mr. Messenger that evening?

A. Yes, I called Bill, talked to him on the phone. I asked him if he was interested in joining the union, he said he was. I read the card to him completely, filled it out and I signed it for him.

Q Why didn't Messenger--did you ask him to come to the store?

A. I did ask him to come, but he said it was too inconvenient for him to travel all the way and he said that my signature would suffice.

MR. LADOV: I would like this marked as General Counsel's exhibit number twenty four, please.

(The document above-referred to was marked General Counsel's exhibit No. 24 for identification.)

Q (By Mr. Ladov) I show you what has been marked as

General Counsel's exhibit number twenty four, Mr. Halliday, can you identify that?

A. Yes, this is the card that I signed.

JUDGE NACHMAN: The card that you signed?

THE WITNESS: Yes, for Bill Messenger.

Q (By Mr. Ladov) Would you for the record, please, Mr. Halliday, go over exactly what on this card, if anything, you read to Mr. Messenger?

A. WEll, --

Q Read it in for the record, please.

A. "I hereby make application for membership in the REtail Clerks International ASsociation and affirm that the above statements are true and I agree that allmoneys paid by me shall be forfeited and my membership declared void if they are not true. I authorize the Retail Clerks International Association to represent me for the purpose of collective bargaining and handling of grievances, either directly or through such Local Unions as it may duly designate."

Q Did you read him the top of the card?

A. Yes, because I didn't know any of the information.

Q As you would read the top--you describe what happened.

A. Then I read the bottom here also, then I asked him the information. He told me the answers and I filled them in.

Q Is that your handwriting where it says applicant's signature?

A Yes.

Q But it is William Messenger's name?

A Right.

Q Is that your handwriting at the bottom of the card where is says employee's signature?

A Yes.

Q But it is William Messenger's name?

A Right.

Q Did Mr. Messenger tell you that you could sign his name?

MR. DICKER: Objection.

JUDGE NACHMAN: You're leading the witness.

MR. LADOV: I withdraw that question.

Q (By Mr. Ladov) What did you do with your authorization card with the name of William Messenger on it?

A I also gave it to Bob Belesky.

JUDGE NACHMAN: Gave it to whom?

THE WITNESS: Bob Belesky.

Q (By Mr. Ladov) Was that on August 27th, 1975?

A Correct.

JUDGE NACHMAN: You may have answered this, what did you do with your card after you signed it?

THE WITNESS: I gave it to him also at the same time.

Q (By Mr. Ladov) Mr. Halliday, Mr. Holleran was your manager?

A Yes, sir.

Q Did Mr. Holleran ever ask you about the union?

A Yes, one time he had been at a meeting with Mr. Brien and all the other managers downtown and I came in to the shop and I was going to work actually and he was talking to Bob Corrigan and myself about it and he asked us, you know--

Q What did he say?

A He said that Mr. Brien wanted to negotiate with each of us separately without the union. He asked us what we wanted. I told him quite a few things, I told him we wanted different commission rates, I told him we wanted better hospitalization, I told him we wanted benefits like for eye glasses and stuff like that, dental.

Q Did he make any response?

A Yes, he told me that the union was part of the Mafia and if this stuff continues, that all of the part-time employees would end up being fired.

Q Did you reply at all?

A Yes, I told him that he was full of shit. I told him that when I started there in 1971 I was working for a manager named Ron Moran who is now at the Monroeville store and he had told me after a while that I had worked there that when he was hired in 1963 that he got the same rates of a dollar an hour plus 5, 3 and 5 commission as we had in 1975, which was twelve years later.

Q Did Mr. Holleran make any other statements to you at this time?

A He told me that he had told Mr. Brien that only myself and Greg Koritsky were for the union in his store.

Q Were you ever discharged, Mr. Halliday, from Florsheim?

A Yes, I was discharged on September 18th, 1975.

Q Could you relate the circumstances surrounding your discharge?

A Yes, I got a call at home from James Holleran and he said, Andy, last night was your last night, you knew this was coming.

Q Anything else?

A Yes, I told him to get Mr. Holmes because he knew that he was a hatchet man that they had sent down from Chicago and I wanted to talk to him and he returned my call later and I told him that I didn't think it was very fair what they were doing, what Florsheim was doing, you know, to us as employees because we had all been good employees to them.

I also told him that they had forged my name to the hourly records at the store when I had never been there. I also told them that I wanted back pay from the years when I had been an"assistant manager", when I had worked seventy-two hours a week and got no extra compensation.

Q Mr. Halliday, regarding the conversation between--well, that you have testified to between Mr. Holleran and yourself about the union, do you recall when that occurred?

A It was around September 8th to 10th, in that area.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: May I see any statements--

JUDGE NACHMAN: What do you want to do with GC#24?

MR. LADOV: I will offer that when Mr. Messenger is put on the stand, Your Honor.

MR. DICKER: May I have any statement that the witness has given or adopted?

MR. LADOV: Yes.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Halliday, you received a phone call from Mr. Osselburn on the 27th of August?

A Yes, sir.

Q About what time of the day was that?

A Around six thirty, seven o'clock.

Q In the evening?

A Yes.

Q He asked you whether you were interested injoining the union?

A Yes, sir.

Q How longwas this telephone conversation?

A Maybe five minutes at the most.

Q What did you tell him?

A I told him I'd be very glad to.

Q Did he give you any reason why you should join the union?

A Any reasons, right?

Q Yes.

A No, I knew the reason why.

Q You said you'd be glad to, thenwhat did he say?

A He said he'd send Bob Belesky over with the cards.

Q What store does Mr. Osselburn work in, do you know?

A Monroeville Mall.

Q And you worked in what store?

A Northway Mall.

Q How far was that away?

A Maybe thirty minutes.

Q So this was around six thirty that he said he'd send Mr. Belesky over?

A Right.

Q Did Mr. Belesky arrive that evening?

A He arrived a little after seven.

Q Was Mr. Holleran working that evening?

A No, he doesn't work many nights.

Q You said he wasn't working then?

- - - -

A No.

Q You are sure of that?

A Positive.

Q Mr. Belesky gave you a card?

A Yes, sir.

Q Did he give anybody else a card that evening?

A I or did he?

Q Did he give anyone else a card?

A Yes.

Q Who?

A He gave Rob Corrigan and Greg Koritsky.

Q All in the same store?

A Yes, sir.

Q Then what happened?

A THey filled them out.

Q Then you filled out yours?

A I didn't fill out mine, Mr. Belesky filled out mine

Q Mr. Belesky filled out yours?

A Yes.

Q Did you sign yours?

A Yes, sir.

Q Did Mr. Belesky fill out anybody else's other than yours?

A Not that I know of.

Q You saw the others there, didn't you?

A. Yes, I saw the other people there.

Q. Did you see them filling out their own cards?

A. No, not that I can remember.

Q. Well, so you didn't see them fill out their cards?

A. No.

Q. Why did Mr. Belesky fill out your card?

A. Because I was waiting on a customer.

Q. Did he ask you for your Social Security number?

A. Yes.

Q. Did you stop waiting on the customer or did you remember?

A. I was walking back and forth getting shoes for the customer and as I walked back, as he would ask a question I would answer.

Q. Do you remember or know your Social Security number?

A. I know my Social Security number, do you want it?

Q. After he got done filling it out, you signed it?

A. Yes, sir.

Q. Then what did you do?

A. Then they asked me if Bill Messenger would want to join also. I said I would call and ask him.

Q. This is while you were still holding your card?

A. No, I put it down.

Q. So Mr. Belesky waited there when you called Mr. Messenger?

A Yes.

Q You asked him whether he wanted to join the union?

A Bill?

Q Bill Messenger?

A Yes, sir.

Q He said that he did?

A Yes, sir.

Q Then you read this material you indicated you read to him?

A Yes, sir.

Q About how long was that telephone conversation?

A At the most, fifteen minutes.

Q Did Mr. Messenger ask you why he should join the union?

A No, he was already a union member.

Q He was already a union member?

A Of another union.

Q Did anyone ask Mr. Belesky while he was there why they should join the union?

A No.

Q You filled out this card for Mr. Messenger?

A Yes, sir.

Q Then you signed his name in two places?

A Yes, sir.

Q After you did that you then handed your card and

Mr. Messenger's card to Mr. Belesky?

A. Yes, sir.

Q. How long did Mr. Belesky remain at the store?

A. Maybe fifteen minutes after he had all the cards.

Q. How long was the card filling out process?

A. I don't know, I'd say maybe an hour at the most.

Q. So Mr. Belasky was there from shortly after seven until some time after eight?

A. Yes, sir.

Q. NOw, this was on the 27th of August?

A. 1975.

Q. Between the 27th of August and September 8th, did you ever talk to--and September 7th, did you ever talk to anyone, did you ever talk to Mr. Holleran concerning the union?

A. NO.

Q. Did he mention it again?

A. Not that I recall.

Q. Did you mention it to him?

A. Not that I recall.

Q. You don't recall or you didn't?

JUDGE NACHMAN: He said not that I recall.

THE WITNESS: That means no.

Q. (By Mr. Dicker) Does it?

A. Yes.

Q Now, Mr. Holleran came back from this meeting he had at about six o'clock?

A I don't know when he came back, I came in.

Q You came in at six?

A Right.

Q He was already there?

A Right.

Q What happened when he came in on September 8th or 10th, what happened when you came in to work?

A He was talking to Rob Corrigan and I sat on his desk and talked to him too.

Q He was in the middle of a conversation with Mr. Corrigan?

A He was asking Rob Corrigan about the union.

Q When you came in, what was the first thing you heard?

A Hello.

Q From whom?

A Both of them.

Q Then what?

A He was saying that Mr. Brien--

JUDGE NACHMAN: who was saying?

THE WITNESS: Mr. Holleran was saying that Mr. Brien wanted to talk to each of us separately without the union.

Q (By Mr. Dicker) After hello, the first thing Mr. Holleran said was that Mr. Brien wanted to talk to you separately without the union?

A. He was talking to Rob Corrigan at the time.

Q. But you were there and overheard that?

A. I overheard that.

JUDGE NACHMAN: I didn't hear something, did he say without the union or about the union?

THE WITNESS: Without the union.

Q. (By Mr. Dicker) What did you and Mr. Corrigan say?

A. Rob was actually to the point, I think, where he was going to say, Okay, let's hear it from Mr. Brien.

Q. Did you understand my question, sir?

A. Do you want to repeat it?

Q. You didn't hear it?

A. No.

Q. But you answered it anyway?

A. Go ahead and put it over again.

JUDGE NACHMAN: Put your question over again.

Q. (By Mr. Dicker) After you heard Mr. HOlleran say that Mr. Brian wanted to talk to each of you separately without the union, did either you or Mr. Corrigan respond?

A. I didn't respond.

Q. Did Mr. Corrigan respond?

A. Rob was, I think, actually to the point where he was saying, okay,--

Q. Do you understand the question?

JUDGE NACHMAN: We want to know what did he say, not what he was about to say.

THE WITNESS: He was saying, I listened to him, that's what he was saying.

Q (By Mr. Dicker) He said I'll listen to him?

A Yes, he said he would listen to Mr. Brien talk to us about the union.

Q Then what did Mr. HOlleran say?

A Mr. Holleran asked us what we wanted.

Q What did either your or Mr. Corrigan say?

A I told him that we wanted different commission rates, better hospitalization, better benefits.

Q What, if anything, did Mr. Holleran respond?

A I don't know what he said actually.

Q You don't know--

A Right, I don't remember what he said in responding to what I said, I don't know what he said.

Q What was the next thing about the conversation you can remember?

A The next thing I can remember about the conversation he was saying that the union was nothing but apart of the Mafia and if this thing continues, that all the part-time employees would end up being fired.

Q Are you sure he said that?

A Positive.

Q You remember that?

A I remember that.

Q But you don't remember what he said in response?

A I think he said we'll see or something to that affect about the commission rate.

Q Now you remember?

A I said I think, I don't remember exactly to be honest whth you.

Q In substance?

A Well, he said we'll look into it like.

Q Is that what he said, we'll look into it?

A Something to that affect, yes, sir.

Q But do you remember him specifically sayingif this continues, all the part-time employees will end up being fired?

A Yes.

Q THat is what you remember?

A Yes.

Q Do you remember him saying anything else during that conversation?

A Yes, he said that he had been talking to Mr. Brian and he said he told Mr. Brian that only myself and Greg Koritsky were for the union in his store.

Q Did you ask Mr. Holleran how he knew that?

A He had been at the meeting.

Q Mr. Holleran had been at that meeting?

A Oh, did I know--

Q Did you ask Mr. Holleran how he knew that only

Mr. Koritsky and you were in favor of the union?

A. He didn't know.

Q. Did you ask him, did you understand the question?

JUDGE NACHMAN: The qustion is, did you ask him?

THE WITNESS: No, I did not ask him.

JUDGE NACHMAN: Listen carefully to the question, you must answer the question.

Q. (By Mr. Dicker) Are you curious to know why he mentioned that?

A. No, I was not.

Q. Did you attempt in any way to correct the statement that only you and Mr. Koritsky were for the union?

A. No.

Q. YOu just left at that time?

A. Yes.

Q. Did you say yes, I was in favor of the union or no, I"m not in favor of the union?

A. I didn't mention it at all.

Q. You didn't say anything?

A. Yes, I did tell him something, I told him that he was playing games with us and stuff, I told him that he was full of shit, that we were getting ripped off actually.

Q. What else did you say?

A. I told him about Mr. Moran telling me that when he got hired in 1963 that he was hired at a dollar an hour plus five percent commission on Florsheim and accessories, three percent on Worthmores.

Q You were pretty annoyed at the fact that there hadn't been any change in all those years?

A Yes, sir, I was.

Q Was this a loud conversation?

A I would say it wasn't super loud, but I was making my point. I also told him that in 1974 the inflation rate went up fifteen percent and in 1975 it was supposed to go up another ten and we had no increases whatsoever to compensate for it.

Q Again, you were annoyed about that?

A I was very annoyed.

Q Did you ask Mr. Holleran what he meant, if this thing continues, all the part-time employees will end up being fired?

A I knew what he meant.

Q Did you ask him?

A No, I didn't ask him.

Q As a matter of fact, when he said that, you said that you were annoyed about the inflation rate and the failure to increase commission rates and other rates?

A Yes.

Q Is that your response to his statement about being fired?

A Yes.

Q You worked that night?

A Yes.

Q By the way, how many other employees, other than you and Mr. Corrigan and Mr. Holleran were in the store that night?

A None.

Q At six o'clock there were no customers in the store?

A None.

Q About how long did this conversation take?

A I don't know, maybe until six thirty.

Q Half hour?

A Yes.

Q Was there interruptions by customers in that half hour?

A Not that I recall.

Q Now, you got a phone call you said on September 18th, is that right?

A Yes, sir.

Q What time did you get the phone call from Mr. Holleran?

A It was after I got home, so I'd say it was approximately five o'clock, five thirty, in that area.

Q Were you scheduled to work on that night?

A Yes, sir.

Q What did Mr. Holleran tell you?

A He told me that last night was my last night and that I knew this was coming.

Q Did Mr. Holleran ask you if you could work full-time?

A No, he did not.

Q At any time between the 13th of September and the end of February, were you contacted by anyone from Florsheim concerning full-time employment?

A No one whatsoever.

Q YOu also asked to talk to Mr. Holmes?

A Yes, sir.

Q Did Mr. Holmes call you?

A Yes, sir.

Q What did he tell you?

A He told me that the part-time employees were going to be let go because they were going to be bringing in full-time employees to man the stores.

Q Did you ask them why?

A No.

Q What did you say when he said that?

A I told him that there was other reasons involved why we were being let go.

Q What was his response to that?

A I don't remember.

JUDGE NACHMAN: Do you remember whether he said anything?

THE WITNESS: I'm sure he said something but I don't remember what it was.

Q (By Mr. Dicker) You don't remember what it was?

A No.

Q But you do remember earlier that evening when you spoke to Mr. Holleran Mr. HOlleran told you that you knew this was coming?

A Yes, sir, I do.

Q But you don't remember what Mr. Holmes told you later on that evening?

A He said something about, you know, he just went blah, blah, blah, he was trying to start the issue.

JUDGE NACHMAN: Tell us what he said.

Q (By Mr. Dicker) Did he say blah, blah, blah?

A No, he didn't.

JUDGE NACHMAN: Please, just tell us what he said?

THE WITNESS: He said that that was going to be the policy of the store, something to that effect.

Q (By Mr. Dicker) Then you said what?

A I said that I didn't think it was very fair what they had done. I told them for the record that they had kept there that I had -- for the amount of hours I had worked I was a top salesman, I told him that I thought that I was going to see about talking to the Wage and Hour Officers aboutthem signing my things without my authoriz ation. I told them I was going to see about getting back pay and he said he would check into it and call me back, which he never did.

Q You do remember, you also said, did you not, that there were other reasons why the part-timers were being let go?

A Yes.

Q You don't remember what he said to that, if anything?

A No, I don't.

Q But you remember the otherpart of the conversation?

A Yes, I was pretty mad, I didn't want to talk to him that much.

Q You asked him to call you, didn't you?

A Right, I just wanted to tell him what I was planning on doing.

Q You were pretty mad when you spoke to Mr. Holleran too, weren't you, earlier that evening?

A I'd say I was pretty mad.

MR. DICKER: No further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: NO questions, Your Honor.

JUDGE NACHMAN: Thank you, you're excused.

(Witness excused.)

MR. DICKER: Let the record show that I am returning the affidavit of Mr. Halliday to the Board.

JUDGE NACHMAN: Call your next witness, please.

MR. LADOV: I call William Messenger, please.

Whereupon,

WILLIAM MESSENGER

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Ladov) Where do you live, Mr. Messenger?

A 8301 St. Lawrence Avenue, PIttsburgh, PA 15213.

Q Mr. Messenger, were you employed by Florsheim shoes?

A Yes, I was.

Q Would you trace your employment history with Florsheim, please?

A I was hired in August of 1974 and I was terminated on September 18th, 1975.

Q Mr. Messenger, did you ever become aware of the employees' efforts to organize a union?

A Yes, I did.

Q Would you describe the circumstances when you learned of this?

A Some time during the week of August 11th Mr. Koritsky came up to me and said that some of the people out at Monroeville were getting a union together and he wanted to know if I wanted to join.

Q What did you tell him?

A I told him I definitely did.

Q Mr. Messenger, were you ever approached to sign a union authorization card?

A Yes, I was.

Q Would you describe the circumstances?

A Let's see, it was August 27th and I was at home. It was after seven o'clock and I got a phone call from Mr. Halliday. He said that he had gotten the union cards in and they needed them right away and we hammed and hawed about it a little bit as to what we should do and I lived quite far away and it was really impossible for me to get out there, so we decided that the best bet would be for me--well, he would read the card over the phone and I would give him the necessary information and he would sign my name to it.

Q Did he tell you what the card was for?

A Yes, he did, he said it was for membership in the union.

Q I show you what has been marked as General Counsel's exhibit number twenty four, would you please read that card and tell us, is the information contained on the top half of the card correct, is it accurate?

A Yes, it is.

Q Is your Social Security number 200-42-7536?

A Yes, it is.

Q Did you tell Mr. Halliday that information?

A. Yes, I did.

Q Were you hired on 8/29/74?

A. Approximately, I couldn't remember the exact date, but it was near the end of August of 1974.

Q Did you give Mr. Halliday all the information contained in the top part of the card?

A. Yes, I did.

Q Did you mention orhave any discussions with Mr. Halliday at this time regarding the execution of this card, the signing of this card?

A. I don't quite understand, if there would be any problem?

JUDGE NACHMAN: Did you have any discussion at all with Mr. Halliday as to how your name would appear on this card?

THE WITNESS: Not really, as it ended up later on I just, when I later gave my affidavit I basically, I didnot tell them that he had signed the card for me, I said that I had signed the card myself.

JUDGE NACHMAN: Just tell us, what did you tell Mr. Halliday to do with regard to your signature on the card? If anything?

THE WITNESS: Just to sign it.

JUDGE NACHMAN: You told him to sign your name to it?

THE WITNESS: Yes, sign my name to it.

Q (By Mr. Ladov) This conversation with Mr. Halliday occurred on August 27th, 1975?

A Yes, it idd.

MR. LADOV: I offer General Counsel's exhibit number twenty four into evidence.

MR. DICKER: I think that technically this is the wrong witness from whom to submit the card, this is not the author of the card and technically I don't think it's probative of anything. On the other hand, I do think that perhaps I'll get to it at a later time, I think this is the wrong witness.

JUDGE NACHMAN: It's been proved by two witnesses.

MR. DICKER: Yes, it's been proved by one witness, I don't think it's been proven by two witnesses. I also think that it's not probative of anything because of the way it was executed. I will not object to it.

JUDGE NACHMAN: It will be received , GC#24 is received.

(The document heretofore marked General Counsel's exhibit No. 24 was received into evidence.)

JUDGE NACHMAN: Any further questions?

MR. LADOV: Yes.

Q (By Mr. Ladov) Did you ever have any discussions regarding the union with Mr. Holleran?

A Yes, I did, it was the day after Mr. Levine received the letter and all. I am really not sure of thedate but I walked into the store and I said hi, Jim, what do you think of the union, he was rather surprised about it.

JUDGE NACHMAN: Who said this?

THE WITNESS: I said this to him, Mr. HOlleran, my Employer. He looked rather surprised and he said well, we're not really supposed to talk about it, then we just talked back and forth about the union for a while.

Q (By Mr. Ladov) What did Mr. Holleran tell you?

A He didn't think the union was a good idea.

JUDGE NACHAMN: What did he tell you?

THE WITNESS: He said the union would take away or reduce the power that the managers had over their stores, that is really the only thing I can remember specifically him saying.

Q (By Mr. Ladov) Is it your testimony, Mr. Messenger, that you asked Mr. Holleran about the union?

A Yes, I did.

Q When were you discharged, Mr. Messenger?

A September 18th, 1975.

Q Could you relate the circumstances surrounding your discharge?

A Well, I arrived home from work at approximately four o'clock. I got a call from my wife. She said she had some good news for me and some bad news for me. So I asked her what it was. She said the good news was that I didn't have to go to work that night, but I would be paid for it. She said the bad news was that I never had to go to work again.

Q Continue please.

A After that was over, after I finished talking to my wife, then I called Mr. Holleran to find out just exactly what had happened. He said that the employees, all the part-time employees had been laid off, that this was--they were to be replaced with full-time employees and that this was, that was pretty much it, really. He was sorry about it. He also offered me a full-time job.

Q What did you tell him?

A I told him that I couldn't take it because I was already employed full-time.

Q During your period of employment with Florsheim, did you always have a full-time job?

A Yes, I did.

Q Where?

A At Union Switch and Signal in Swissvale.

Q Had you ever told Mr. Holleran about your working full-time?

A Oh, yes, he knew.

Q Prior to September 18th, 1975, had you ever heard that Florsheim was going to eliminate part-time employees in the

Pittsburgh area?

A No.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: May I ask the Board to produce any statements or affidavits adopted or signed by the witness?

MR. LADOV: Here you are.

MR. DICKER: May I have a few moments?

JUDGE NACHMAN: Yes.

Off the record.

(Short recess was taken.)

JUDGE NACHMAN: On the record.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Messenger, the--you first spoke to Mr. Koritsky about the union on August 11th?

A That's correct.

Q Was that a long conversation?

A About fifteen, twenty minutes I would say.

Q Did you talk the pros and cons of unions?

A Yes.

Q That was in the store?

A Yes, it was.

Q Was the manager around then?

A Yes, he was.

Q Did the manager, Mr. Holleran, participate in that conversation?

A. No, he did not, he was sitting out in front at his desk whereas we were in the back of the store.

Q. Was it slow time?

A. Yes.

JUDGE NACHMAN: Were you on or off the sales floor?

THE WITNESS: We were off the sales floor.

Q. (By Mr. Dicker) Mr. Holleran was, I believe, on the sales floor?

A. Yes, he was.

Q. Now, at the end of that conversation with Mr. Koritsky, had you indicated to him whether or not you wanted to join the union?

A. Yes, I have.

Q. What did you indicate?

A. I indicated that I did want to join, definitely.

Q. Did he say anything to you then about signing a card?

A. He mentioned something about cards and that they would be coming in.

Q. All right, from August 11th to August 27th did you hear anything about the cards?

A. No.

Q. Did you hear anything about the union?

A. Well, I discussed it with Mr. Corrigan. I didn't discuss it at all with Mr. Holleran until after the cards had been signed.

Q I'm talking about the period now between the 11th of August and the 27th of August, before you signed the card?

A No, just Mr. Corrigan and I probably said a few words with Mr. Koritsky about it, but it was nothing important.

Q Did you during that period of time, did anyone offer you a card to be signed?

A NO, they did not.

Q Now, you got a phone call at home on the 27th, from whom did you get that phone call?

A Mr. Halliday.

Q Now, had you talked to Mr. Halliday in the past about the union?

A I dont believe so.

Q YOu spoke to Mr. Koritsky?

A Yes.

Q And you spoke to Mr. Corrigan?

A Yes, sir.

Q But not Mr. Halliday?

A No, you see I did not work with Mr. Halliday.

Q Did you know Mr. Haliiday?

A Yes, I had worked with him previously. We had a common night but than he was moved to another night and I no longer worked with him.

Q So it was Mr. Halliday who did call you that evening about--

A Yes, sir, it was.

Q He said what?

A He said the cards were in and they needed them right away and we discussed then how should this be done, do you want to come up to the store? I said well, no, I can't really, it's too far to drive over, I really don't want to.

Q Stop there for a moment, did you ask or did Mr. Halliday explain why it was necessary for the cards to be signed right away?

A I don't believe so.

Q You didn't ask him?

A No.

Q And he didn't volunteer?

A No.

Q But he wanted the card signed that very night?

A Yes, sir.

Q He told you that it was important that it be signed that very night?

A Yes.

Q Important enough for you eventually to agree that he sign it for you?

A Yes.

Q Important enough for you to stay on the phone while he read the card to you?

A. Yes, sir.

Q. What part of the card do you remember him reading to you?

A. I believe that he read the entire card to me, I heard some legal jargon, that sort of thing, that he read to me.

Q. What was the legal jargon about, do you remember?

A. Not specifically, it was a long time ago.

Q. Generally, do you remember what the legal jargon was about?

A. This is authorization for membership and fees to be sen t to whoever, this, that and the other.

Q. That's about all you remember?

A. Yes.

Q. Were you curious as to why he wanted the card that night?

A. Not really.

Q. You were coming to work when after the 27th of August, that's a Wednesday?

A. The next day.

Q. Thursday?

A. Yes.

Q. Did you ask him, can it wait until tomorrow?

A. I can't specifically remember.

Q. So you don't remember whether you asked him that or not?

A No.

Q YOu signed the card--strike that.

Do you know what happened to your card after that--strike that.

Did Mr. Halliday say he was going to sign the card?

A. Yes, he did.

Q Do you know what happened to your card after that?

A. No, I do not.

Q The next week, the week following the week in which the 27th fell, you had a conversation with Mr. Holleran?

A. In fact, with the calendar there, it was that Friday I believe.

Q It was a Friday?

A. Yes, because I work with Mr. Holleran on a Friday.

Q Friday and not Saturday?

A. I did not work Saturday, I only worked Friday night.

Q Friday night?

A. Yes.

Q You had a conversation with Mr. Holleran Friday night?

A. Yes.

Q You came to work at what time?

A. Six thirty.

Q p.m.?

A. Yes.

Q The conversation started up, I refer to your direct testimony, when you said hi, Jim, referring to Jim Holleran, what do you think of the union?

A Yes, that's correct.

Q And he said to you, you weren't supposed to talk about it?

A Yes.

Q But you and he then proceeded to talk about it anyway?

A Yes.

Q The conversation, whether or not unions were good or bad, is that right?

A Yes, basically, it was unions in general and this one a little bit in specifics. We often talked about different things, this was not unusual.

Q Sort of in the nature of a political discussion?

A Yes.

MR. LADOV: Objection, characterizing a discussion, Your Honor.

JUDGE NACHMAN: I don't think it has any consequence.

Q (By Mr. Dicker) Between that date which would be, you said the evening of August 29th, and September 18th, did you ever have any other conversations with Mr. HOlleran concerning the union?

A Not that I can specifically remember, but it probably came up in a conversation because whenever I worked with him, we did talk quite a bit, but it was nothing that places itself in my mind.

Q On the 29th of August did you indicate to Mr. Holleran you were in favor of unions?

A Yes, I did.

Q After that date did he ever tell you you were going to be fired because of your union opinions?

A No, he did not.

Q Did he ever tell you anyone else was going to be fired because of their union opinions?

A NO, he did not.

Q Then you got home on September 18th at around what time, four o'clock?

A Four o'clock.

Q Your wife told you that she had good news and bad news?

A That's right.

Q After your conversation with your wife, you called Mr. Holleran?

A Yes.

Q Was he pleasant to you on the phone?

A Yes, he was.

Q What did he tell you?

A Let's see, he said he was sorry that I had been terminated but that this was the general policy of all the stores, all the part-time people were being terminated and they were being replaced by full-time people.

Q Did he talk to you about full-time employment?

A. Yes, he did.

Q What did he say about that?

A. I can't remember specifically, but he said something to the effect that he wanted to know if I wanted a full-time job.

Q And you said what?

A. No, that I was already working.

Q Did he say anything to you about the union during that conversation?

A. I don't believe so.

Q Did there come a time in December of 1975 when you were offered full-time employment at Florsheim?

A. No.

Q Was there a time in January or February of 1976 when you were offered full-time employment for Florsheim?

A. No.

Q When you worked, how many hours did you work?

A. Generally I worked Thursday and Friday nights, from six thirty to nine thirty, approximately three hours.

Q The store in the shopping center?

A. Yes, Northway Mall.

Q Was there any time that you worked on Saturday?

A Yes.

Q When was that?

A Usually it was when somebody who normally takes a SAturday couldn't make it. I really can't remember any specific date.

Q Can you remember whether you worked a Saturday at the end of August?

A No, I didn't.

Q Are you sure of that?

A Positive.

MR. DICKER: No further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: NO questions, Your Honor.

JUDGE NACHMAN: All right, the witness is excused.

(Witness excused.)

JUDGE NACHMAN: CAll your next witness.

MR. LADOV: I call Robert Corrigan, please.

Whereupon,

ROBERT CORRIGAN

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

MR. DICKER: I am returning to the Board the affidavit of William Messenger given to me at the beginning of his cross examination.

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address.

A Robert Lee Corrigan, 309 Coachman Road, Allison Park, PA 15101.

Q Were you ever employed by Florsheim Shoes, Mr. Corrigan?

A Yes, I was. I was employed January 15th, 1975 and I was terminated September, 1975, September 19th, 1975.

JUDGE NACHMAN: Full-time or part-time?

THE WITNESS: I was part-time but I worked thirty to thirty-five hours per week, regularly.

Q (By Mr. Ladov) at the time of your hire, were you hired specifically as a part-time employee?

A Yes.

Q Did you hold a full-time job?

A NO, I am a full-time student at Community College of Allegheny County.

Q Were you at the time you began your employment at Florsheim?

A Was I attending school then?

Q Yes.

A Yes, I was.

Q Where did you work?

A At the Northway Mall in the north hills.

Q Who was your immediate supervisor?

A It was James R. Holleran.

Q What was your rate of pay as a part-time salesman?

A I received one dollar per hour and 5, 3, and 5.

Q AT the time of your application for employment, did you inform Mr. Holleran that you were a full-time student?

A Yes, I was, as soon as I came in, I actually worked in the mall and went to a couple of other places and then I went to Florsheim looking for a job, I had told him that.

Q Mr. Corrigan, did you ever receive any compliments from--about your work from any of the managers' at Florsheim?

A Yes, I did, I received several compliments from Mr. Holleran, Mr. Koritsky, Mr. Brien and also Mr. Holmes, when I met with him.

Q Mr. Corrigan, did you ever learn of the employees' efforts to organize a union?

A Yes, I did. It was around August 11th I received a telephone call from Jimmy Schneider from downtown. He talked to Greg and I about wanting to start a union and wanted to get Florsheim organized. At the time I was questionable about it and I told him I'd have to think about it. I wasn't definite to join the union yet. Then later after I was thinking about it, the married men with children, the pay that was received and the conditions, I couldn't possibly see how they were making it because of the things that were going on.

Q Did you ever sign a union authorization card?

A Yes, I did.

Q Would you describe the circumstances surrounding your execution of that card?

A Bob Belesky came out to our store the 27th of August, it was in the evening around seven o'clock. He asked us if we wanted to join the union and if we would fill out these membership cards. We needed fifty-one percent of the employees power or signatures to be recognized by the union.

MR. LADOV: I would like this marked General Counsel's exhibit number twenty five.

(The document above-referred to was marked General Counsel's exhibit No. 25 for identification.)

Q (By Mr. Ladov) Can you identify that, what has been marked as General Counsel's exhibit number twenty five?

A Yes, I can, this is the membership application I signed in the Florsheim store in the Northway Mall.

Q Where did you get it?

A Off of Bob Belesky.

Q Is that your signature?

A Yes, it is, it is my signature.

Q Is that the date you executed the card?

A Yes, the 27th.

Q Did you read the card before you signed it?

A I read everything on this card and answered to my knowledge.

Q Then after you executed the card, what then did you do with it?

A I returned it back to Bob, then after a while he left back to Monroeville.

JUDGE NACHMAN: Just for the record, when you said Bob, who was that?

THE WITNESS: Bob Belesky.

MR. LADOV: I offer General Counsel's exhibit number twenty five into evidence.

MR. DICKER: I have no objection except I would like to get copies of thebacks of those cards?

JUDGE NACHMAN: I think counsel has stated that he will make those available to you, I"m sure.

GC#25 will be received.

(The document heretofore marked General Counsel's exhibit No. 25 was received into evidence.)

Q (By Mr. Ladov) Mr. Corrigan, your supervisor was Mr. Holleran?

A Yes.

Q At the Northway Mall store?

A Yes.

Q Did Mr. Holleran ever ask you anything about the union?

A Yes, he did.

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: It's a leading question.

Q (By Mr. Ladov) Go ahead.

A Yes, one evening when I was working with him he had asked me if I had joined the union and I said that I did at the time. We were discussing it and that was the night Mr. Halliday came in to work the evening shift with me.

JUDGE NACHMAN: I didn't catch what you said?

THE WITNESS: I said Mr. Holleran and I were discussing it, he asked me if Ijoined the union and I said yes, I did, I filled out the application and I explained to him why. I said because the main fact of the married menand also the ones that had children and at the time Mr. Halliday was coming in to work. He usually worked that night shift with me, we were discussing at the time. He asked Mr. Halliday and I why we wanted to join a union, Mr. Halliday replied because of the commission rates, the hourly rate, the benefits that we didn't even have, that we needed these and different things, getting tired of receiving the same pay that somebody else did twelve years ago.

Q Did you hear anything else during these conversations?

A. Just that Mr. Holleran said that unions aren't any good, they are bad and they are part of the Mafia and that if we would continue to stay with the union and stay at the positions we were at, that most likely all the full-time employees would be terminated, I mean part-time, excuse me.

Q. When did these conversations occur?

A. It was in August at the time, I believe it was after we signed the cards.

Also Mr. Brien was in town at the time.

Q. When were you discharged, Mr. Corrigan?

A. I was discharged the 19th of September.

Q. Did you--could you describe the circumstances surrounding your discharge?

A. Yes, I can.

Mr. Holmes, which is one of the Florsheim officials from Chicago came into town. He talked to me personally when he came out to the store.

JUDGE NACHMAN: Where did he talk to you, in the store?

THE WITNESS: Outside the store in the hallway.

Q. (By Mr. Ladov) When was this?

A. This was the 16th of September.

Q. Go ahead, continue, please.

A. We were talking about if I wanted to become a full-time employee. I said yes, I would, considering it would only be five to ten more hours a week, which I was used to working hours and I could fit it in with my schooling. He asked me if it would be all right if he would move me to another store, I said I would prefer to stay out at the NOrthway Mall store because I know the area and it's closer to home.

He said well, if there would be any emergency or anything at another store, would you be able to go and I said yes.

Q Anything else occur on the 16th of September?

A Yes, then he just talked to me about that, then he excused me, then he talked to Greg Koritsky, the same thing.

JUDGE NACHMAN: Did you hear him talk to Mr. Koritsky?

THE WITNESS: No, I didn't, I had to go in the store to watch it and Greg was out in the hallway with MR. HOlmes.

Q (By Mr. Ladov) What then occurred regarding your discharge, Mr. Corrigan?

A Well, I had come in to work, I think the 17th, I was told I was terminated.

Q Who told you that?

A Mr. Holleran, My supervisor, I was pretty upset because he told me that he wanted forty-eight hours now.

Q Who told you this?

A Mr. Holleran told me that Mr. Holmes wanted forty-eight hours a week from all full-time employees and this got me very angry because here the guy just the day before was talking to me about forty hours, didn't mention anything about forty eight, so I was really upset. I told Mr. Holleran that I wanted to meet with Mr. Holmes and I had walked around the Mall so I could get myself together and then about one o'clock I went down--

Q What do you mean by get yourself together?

A I was pretty upset, I really enjoyed working for Florsheim, I really liked it, it was the best job I ever had. I just had to cool down so I wouldn't lose my cool.

Q Continue.

A I drove downtown to 501 Smithfield Street, waited there a while for Mr. Holmes, until he came up from the downstairs stockroom. I had gone downstairs with him and I wanted to find out what kind of games he was playing with me. One day he asked me forty hours and the next day he wanted forty eight.

MR. DICKER: Could I have an objection, that's not testimony, Your Honor.

JUDGE NACHMAN: I think the witness can describe the circumstances, what was in his mind. The answer will stand.

Go ahead.

THE WITNESS: So I talked to him, he was telling me that he wanted an older man in the store even though I think him and Mr. Brien didn't like it that the manager--

JUDGE NACHMAN: Don't tell us what you think or what you may have--

THE WITNESS: He told me he wanted an older man in the store to sell to older gentlemen, roughly from thirty on up. I told him most of my clients were from thirty years on up. I very seldom sold anybody my age shoes, especially FlorSheim's for the simple reason, they don't know the quality of the shoe and they're not going to put out the money for it because I don't know the reason behind it.

So he said he wanted someone in there to promote sales and I had told him at the time I was the top salesman of the store, I sold an average of a thousand dollars of merchandise while I worked thirty to thirty-five hours. He said he wanted somebody to get in there to psyche up everybody, get the moral going. I toldhim that I'm used to being put into a moral, to get people excited because I did in high school play socker, swimming and volley ball. So I know who to get psyched and get other people psyched with me.

Then he said, that's when he complimented me for being a good salesman and having the records the way they were and also my initiative and that he would callon it later.

I also showed him the schedule I could work up to fifty-one hours that would fit into my school schedule and would fit into basically all the stores.

MR. LADOV: I would like this marked as General Counsel's exhibit number twenty-six.

(The document above-referred to was marked General Counsel's exhibit No. 26 for identification.)

Q (By Mr. Ladov) I show you what has been marked as General Counsel's exhibit number twenty-six, could you identify that, please?

A YES, THIS IS THE schedule I had made up in the NOrthway Mall of the schedule I could work for Florsheim for exactly fifty hours and one half.

Q Did you give this to Mr. Helmes on that day?

A Yes, I did, I placed it in front of him also with my school schedule.

Q Would you explainwhat it means, Monday, 9:30, what does that mean?

A Monday means 9:30 in the morning I could work until 9·30.

Q The next day?

A The next day I can work from 10:00 to 9:30.

JUDGE NACHMAN: 10:00 in the morning to 9:30 in the evening?

THE WITNESS: Yes.

Q (By Mr. Ladov) WHat does eleven and a half mean on

Tuesday?

A. That means the hours that were available. Wednesday I could work 5:00 to 9:30, 5:00 p.m. to 9:30 p.m., Thursday, another day that I could work 11:00 a.m. to 9:30 p.m., which is ten and a half hours and Friday I could work from 1:30 p.m. to 9:30 p.m. which is seven hours and Saturday I could work 10:00 a.m. to 9:30 p.m. and it is my handwriting.

MR. LADOV: I offer General Counsel's exhibit number twenty six into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: GC#26 will be received.

(The document heretofore marked
General Counsel's exhibit No. 26
was received into evidence.)

THE WITNESS: Then I had placed that to Mr. Holmes and he had looked it over, he said he'd try and keep me on and at that time he called Mr. Holleran.

JUDGE NACHMAN: Did he call him in your presence?

THE WITNESS: Yes, he did. He talked to him, he said to keep Mr. Corrigan on the schedule as of now, that the new man, Mr. Christensen, would be coming out to the store and that he would--just have me finish that day out there and that they were going to place me somewhere else. He did not want four guys at that store, he said he only wanted three and he specifically wanted Mr. Christensen out there for some reason.

Q (By Mr. Ladov) What then occurred, was that the end of the conversation with Mr. Holmes?

A. Yes, that ended it.

Q Then what?

A. Then I returned back to Northway Mall and then I met Mr. Christensen and Mr. Holleran, we had talked.

Q Did you work that evening?

A. Yes, I did, I finished the evening with Mr. Christensen and then I had to take him down at the end of the evening, at 9:30, I took him down to the Sheraton where he was going to spend the night, then I went home.

Q Then what occurred?

A. Then I went to work the 19th of September, I believe it's a Friday. I walked into the store I think 12:45 and the first thing Mr. Holleran told me is, I was definitely terminated. He was very upset about this.

Q Did he tell you why you were definitely terminated?

A Yes, he said that my schedule was inadequate for the downtown store and that he personally was hurt because he had personally trained me and saw me progress to this top salesman bracket.

Q At the time of your discharge, Mr. Corrigan, did Mr. Holleran mention any future employment with Florsheim?

A Yes, he did, he said if he would get the okay from

Chicago, he would like to have me on part-time for Christmas help.

Q Were you hired over Christmas, 1975?

A. No, I wasn't.

Q Mr. Corrigan, were you ever subsequent to September 18th, 1975, offered a full-time job?

A. No.

Q Were you ever offered a full-time job at any time at Florsheim Shoes?

A. Yes, I was, twice.

Q Would you describe that?

A. I was offered just recently in February when Terry was leaving South Hills.

Q Terry, do you know his name?

A. I don't know his last name.

Q Continue.

A. He, Mr. HOlleran called me and asked me if I'd like to work outat South Hills because Ron had asked him to ask me and I told him I would like to but I cannot because I was in the middle of school and that South Hills is a distance away from my home and right now at this time wouldn't be the right move for myself to make and then I was also offered a job again out at the NOrthway Mall when Mr. Christensen had taken the offer to be the manager of the store and again, school was in the way. I could not because of school.

Q. Why were you able in September to work full-time and not in February?

A. September I was already half way through school, the extra ten hours didn't matter much, because it was flexible and this schedule I have now is a lot tighter. If this was offered to me before January I would have been able to arrange it because I would have gotten myschedule arranged at school that way before I registered for the spring semester.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: I'll ask the Board to produce any witness statements adopted or signed by the witness.

May I have a few moments?

JUDGE NACHMAN: WE;ll take a ten-minute recess.

Off the record.

(Short recess was taken.)

JUDGE NACHMAN: On the record.

YOu may cross examine.

CROSS EXAMINATION

Q. (By Mr. Dicker) You indicated youreceived a phone call from Mr. Schneider on August 11th?

A. Around that time.

Q. He spoke to you?

A. Yes he did, because we have two phones in our store and I had answered one of them.

Q Did someone else get on the other phone?

A Later, yes, Greg got on the other end of the phone.

Q While you were in the middle of this conversation?

A Right.

Q Did Mr. Schneider ask you whether you wanted to join the union?

A Yes, he did.

Q Did he give you the reasons why you should join the union?

A He just said we would get higher wages, better commissions and benefits.

Q You said you'd have to think about it?

A Yes, I did.

Q What did Greg say?

A I believe I hung up then because there was a customer in the store.

Q The next time you heard about the union was on August 27th when Mr. Belesky came to the store?

A No, it isn't. Later in August Mr. Schneider brought up the contracts at former Florsheim stored that are under unionized and Greg Koritsky and I had looked them over and about then, that's when I started to decided to join the union.

Q Some time between August 11th and August 27th Mr. Schneider brought you some contracts?

A Yes, that's correct.

Q. You read them?

A. Yes, Greg and I both looked them over, Greg Koritsky.

Q. Did you take them home with you or did you read them in the store?

A. We read them in the store.

Q. Then Mr. Belesky got there about seven o'clock?

A. On the 27th.

Q. Then he again asked you whether you wanted to join the union?

A. Yes, he did.

Q. Did he say that he needed the cards right away?

A. Yes he did, for the simple reason, he needed fifty-one percent of the employees to sign to be recognized by the union.

Q. Is that the only reason that he said that he needed them right away?

A. Yes, that's the only reason.

Q. You filled out the card in his presence?

A. Yes, I did.

Q. What did you do, give it back to Mr. Belesky?

A. Yes, I did.

Q. How long did Mr. Belesky stay that evening?

A. Roughly about an hour.

Q. You read everything on the card?

A. Yes, I did.

Q Including the small print on the left--to the left of your signature?

A Especially that for the simple reason, it is small print.

Q And then on the night of August 29th you had another conversation with Mr. Holleran about the union?

A ARound that week we did, yes.

Q Do you remember what day it was?

A It was theday that Andy Hall and I both worked.

Q I'll show you a calendar and ask you if that helps fix the date? Was it Friday night, the 27th, it was Wednesday when you signed the card, right?

A Right.

Q Friday night did you have that conversation?

A I don't believe so, I think it was the 28th because I'm pretty sure that Thursday night Mr. Halliday and I both worked that night.

Q You think it was Thursday night, the 28th?

A Yes.

Q Not Friday, the 29th?

A No.

If I'm not mistaken, I don't think Mr. Halliday worked a Friday night while I was employed.

Q You don't think he worked Friday nights?

A Not that I know of, no.

Q. You got in before Mr. Halliday?

A. Yes, I did.

Q. How did the conversation start with him, how did it start, who started the conversation?

A. Mr. Halliday, excuse me, Mr. Holleran.

Q. Mr. Holleran said what?

A. He asked me if I was in favor of the union.

Q. This is Thursday night, the 28th?

A. Correct.

Q. And you told him what?

A. I told him, yes, I was.

Q. About how long was this conversation from the time you started on Thursday evening, the 28th, until the time it concluded?

A. Maybe thirty-five minutes.

Q. And you remember it well?

A. Now I do, yes.

Q. Was there a time you didn't remember at all?

A. Yes, when I gave my affidavit.

Q. So that when did you give your affidavit to the National LaborRelations Board?

A. The 26th of September if I'm not mistaken.

Q. Let me show you this document, take a look at the document and see whether this refreshes your recollection as to the dates. I call your attention to the last date?

A. Yes, I had sworn to it on the 26th of September.

Q. That's when you gave it?

A. Yes.

Q. Now, on September 26th, 1975?

A. Right.

Q. You didn't remember this conversation on August 28th with Mr. Holleran and Mr. Halliday?

A. No, I didn't.

Q. Were you asked whether or not you had a conversation?

A. Yes, the gentleman that had taken that down.

Q. The gentleman being Mr. Levinson?

A. Right. He had called me and asked me if I had remembered a conversation.

Q. He called you when?

A. When? I really can't say.

Q. Not on the 26th?

A. No.

JUDGE NACHMAN: Before or after?

THE WITNESS: It was after, Your Honor.

Q. (By Mr. Dicker) On the 26th you have a meeting with Mr. Levinson at the National Labor Relations Board on the 26th, is that right?

A. Yes.

Q. And you discussed the union, you discussed the whole group of items about the union, whether you had joined the union and conversations you had about the union, is that right?

A. You mean the 26th?

Q. Right.

A. I gave him my affidavit, right.

Q. And you talked about the union situation to him?

A. I don't know what you mean by union.

Q. On the 26th did Mr. Levinson ask you whether or not you had any conversations with Mr. Holleran concerning the union?

A. I can't remember if he did .

Q. You don't remember whether he did?

A. No, I can't. He just told me to remember everything that happened to my best knowledge and that is all in my affidavit.

Q. And you didn't remember at that time the conversation on August 28th?

A. No.

Q. You didn't remember on the 26th of September about a conversation on August 28th?

A. No, I didn't.

Q. But now you remember it?

A. Yes.

Q. You did remember attending a union meeting on August 26th?

A. No, I'm sorry, I had given the wrong date, that was

September 4th.

Q But you did remember attending a union meeting?

A Yes, I did, because I had worked that evening and I had to go down afterwork, got there late, the majority of the people were already there and I had signed a paper letting them know that I had attended that meeting that evening.

Q But you remember that evening when you spoke to Mr. Levinson on the 26th of September, is that right?

A Correct.

Q You also remember the events of August 27th, the night that you signed the cards?

A Yes, I do.

Q You also remember the phone call you had on August 11th?

A Yes, I do.

Q I'm talking about on September 26th you remembered all that?

A Yes, I did.

Q But you didn't remember the conversation on August 28 with Mr. Halliday and Mr. Holleran?

A No, I didn't.

Q Wasn't it a loud conversation at one point?

A I wouldn't say so, it wasn't really loud, like whoever was in the store would have heard the conversation.

Q Was there anyone in the store during that thirty-five minutes?

A. There might have been a couple of customers that I had most likely gotten up to approach.

Q There were a couple of customers that came in?

A. Yes.

Q So you walked away from the conversation?

A. Correct.

Q Then you came back?

A. Correct.

Q And you remember very distinctly what Mr. Holleran said that evening?

A. I remember him asking me if I was for the union, then when I had told him about what my feelings were towards the union, Mr. Halliday came there and he had started a conversation with Mr. Halliday. Mr. Halliday just explained to him why we werein favor of joining the union and that everyone was getting tired of the conditions.

Q Do you remember distinctly Mr. Holleran saying that unions aren't any good?

A. Yes, I do.

Q On that night?

A. Yes.

Q And you remember distinctly Mr. Holleran's reference to the union as part of the Mafia?

A. Yes.

Q That's easy to remember, isn't it?

A. Yes, because I'm Italian.

Q. With an Irish name?

A. Right.

Q. But Mr. Corrigan, you didn't remember the reference to the Mafia on the 26th of September, did you?

A. No, I didn't.

Q. How long did you spend with Mr. Levinson that day?

A. Maybe about an hour.

Q. Maybe a little longer?

A. Not too much longer than an hour. I remember that because I came over from school, then I had to go back over for a class.

Q. Do you also remember in the conversation where there was a reference to a Mafia that Mr. Holleran said something about part-timers being fired?

A. Yes.

Q. What did he say again?

A. He said that if we would continue that we would most likely be laid off.

Q. And this was on the 28th of August?

A. Yes, in the evening.

Q. Were you upset by that?

A. No, not really.

MR. LADOV: I object, strike that question, he's asking for a subjective response.

JUDGE NACHMAN: The objection comes rather late.

MR. LADOV: It does, Your Honor, may we have it stricken?

JUDGE NACHMAN: The record will stand.

Q (By Mr. Dicker) But you didn't remember at that conversation on the 26th of September?

A Correct.

Q All right, let's go now to--from the 28th of August, after the 28th of August did Mr. HOlleran, the manager, talk to you at all about the union?

A NO.

Q Did anyone from the company after the 28th of August talk to you about the union?

A No.

Q By the way, do you know what happened to the card you signed on the 27th?

A Yes, I gave it back to Bob Belesky and then he had taken it back to Monroeville, that's all I know.

Q You don't know what he did with it?

A No, I can assume but that's all.

Q You saw Mr. HOlmes you said on September 16th, is that right?

A Yes.

Q Ever see Mr. Holmes before?

A Are you referring to the time when he came up to our store or when I went down to see him. The 16th I'm pretty sure he came up to our store.

Q Did you ever see him before the 16th?

A. No.

Q You had never spoken with him before the 16th?

A. No, never did.

Q Did you ever speak with Mr. Brien before the 16th?

A. Yes, I did, the week he was in town he came out to our store and I was introduced to him.

Q Is that the time Mr. Brien complimented you?

A. Yes, the manager at the time, Mr. Holleran, had introduced me to him as the Adedas salesman. That's the tennis shoe we carry.

Q At that time Mr. Holmes spoke to you concerning full-time employment?

A. Yes, he did.

Q Did he also talk to you at that time on the 16th about working in the downtown store?

A. No.

Q Just about full-time employment?

A. Right.

Q Did he mention hours?

A. Forty hours.

Q Are you sure that he didn't talk to you about the fact that he would like you to begin to work in one of the downtown stores on the 16th?

A. No, he said that, he mentioned that to me when I went down to see him on the 18th, he did not say it to me on the 16th.

Q. He did not, are you sure [illegible]t?

A. POsitive.

Q. What makes you so positive?

A. I remember the conversation.

Q. He asked you whether or not you could work full-time?

A. Right, forty hours.

Q. On the 16th?

A. Yes.

Q. He said forty hours?

A. Right.

Q. And you said what?

A. I said I would be willing to work forty hours since it would only be five to ten more hours a week.

Q. Did he say to you that the company was looking only for full-time employees?

A. Yes.

Q. Did he talk to you about moving to another store at that time?

A. He had said he might have to move to another store.

Q. He said you might have to move to another store?

A. Correct.

Q But he didn't say what store?

A No, he didn't.

Q He didn't mention downtown at all?

A He didn't mention not one store in particular.

Q So he asked you whether you would be willing to work full-time and by full-time he explained forty hours, is that right?

A Yes, he said forty hours.

Q Then he also asked you whether or not you'd be willing to work in another store?

A Correct.

Q What did you say to the question about working in anotherstore?

A I said I would prefer to work in Northway Mall since I know the area, the people and since it was close to home and the travel time was to a minimum.

Q Did you say you didn't want to work in another store?

A NO, I said I'd be willing to in an emergency.

Q What did he say to that?

A He said okay.

Q All right, anything decided about your hours or about working for another store at that time?

A NO, he didn't, that's when he went to talk to Mr. Christensen--excuse me, Mr. Koritsky.

Q Mr. Koritsky is another employee in the store, is that right?

A. Correct, assistant manager.

Q Okay, then--on the 17th you came in to work at what time, September 17th?

A. I believe it was eleven thirty, something like that. I think I was going to work at twelve.

Q You saw Mr. Holleran?

A. Correct.

Q He said that Mr. Holmes wanted forty-eight hours and that you were going to be let go?

A. Correct.

Q Did he say anything about the union?

A. No, the union was never mentioned.

Q You got upset?

A. Yes.

Q You told Holleran you wanted to meet with Holmes?

A. Correct.

Q What did Holleran say?

A. He said he would do it.

Q He would arrange it?

A. That's right.

Q As a matter of fact, a meeting was arranged for you down at 501 Smithfield?

A. At one o'clock.

Q Just an hour and a half after you came to work?

A. Yes.

Q. That was the time that you gave Mr. Holmes the schedule in evidence, General Counsel's exhibit twenty six?

A. That's correct.

Q. When did you make this out?

A. Also when I was in the Northway Mall at the time.

Q. Before you left to go downtown?

A. Correct.

Q. You met with Mr. Holmes on the 19th, you said something about giving him that and your schedule of school?

A. Yes.

Q. Do you have a copy of that school schedule?

A. Not right now, no, I don't.

Q. Do you have one at home?

A. I could probably find it, yes.

MR. DICKER: May I call upon the witness to produce the schedule so that we can have it marked in evidence?

JUDGE NACHMAN: I don't know what the arrangements are, if we'll be back here or not.

MR. DICKER: I'd like to get a copy of this schedule, one of the problems we have, one of the reasons why we made the Freedom of Information Act motion, Your Honor, is so that we could get all this before the hearing and not in the middle of the hearing. Now I would like to be able to take a look at that schedule and examine it and prehaps introduce it into evidence.

MR. LADOV: Your Honor, he certainly has Mr. Holmes available to him to ask what happened.

MR. DICKER: I want a copy of this schedule.

JUDGE NACHMAN: We'll ask Mr. Ladov if and when this hearing is resumed, if the witness can be back and will have that schedule with him.

MR. LADOV: If he can find it, I'll certainly have it back.

Q (By Mr. Dicker) Did Mr. HOlmes at that time mention working in the downtown store, this is, I guess, on the 18th?

A. Yes, he did, but he mentioned it because of the simple fact he wanted all the good salesmen downtown.

Q Did he tell you why?

A. No, just because they were good.

Q He wanted to improve business downtown?

A. Apparently.

Q Did he tell you that?

A. NO, he just said he wanted all the best salesmen downtown.

Q So he wanted you to work in the downtown stores?

A. Correct.

Q What did you say?

A. I said whatever your decision would be.

Q. Wherever he wanted you to work you would work?

A. Yes, also I did mention when he said he wanted an older man in our store, I couldn't see why he wanted me downtown when the majority of the men down there are over thirty.

Q. Did you say that to him?

A. Yes.

Q. Did he explain toyou that he wanted the good salesmen downtown to improve the business downtown?

A. He just said to me that he wanted the best salesmen downtown.

Q. When he said he wanted you to work at a downtown store, what did you say?

A. I would work--I would prefer to work at the Northway Mall for the simple reason I do know the people out there. I know what they can buy, I know what kind of merchandise they can put in that store.

Q. Is that what you said to him?

A. Yes, I thought that was a better asset than a gentleman a little bit older than me. But since I liked working for the company, I would be willing to work downtown.

Q. And you told that to Mr. HOlmes?

A. Yes.

Q. Mr. Holmes said he would have to see whether your schedule would work into thedowntown store schedule?

A. NO, he said to me, he would try and work a way out that I still could stay with Florsheim and didn't specifically say a downtown schedule.

Q. He took your schedule and when you left the meeting with Mr. Holmes you were under the impression that he wanted you to work in the downtown store?

A. I wasn't given the impression.

MR. LADOV: Objection, Your Honor, we're dealing with a subjective here.

MR. DICKER: I'll withdraw the question and rephrase it.

Q. (By Mr. Dicker) Mr. Holmes toldyou he wanted you to work in the downtown store, is that right?

A. Would you repeat it again?

Q. Mr. Holmes told you he would prefer that you work in the downtown store?

A. He told me he would like to get all the best salesmen down there.

Q. He referred specifically to you, did he not, sir?

A. Yes, as one of them.

Q. Do you know whether the downtown stores were open on Tuesday evenings?

A. If I'm not mistaken, I think they're open Monday and Wednesday evening.

Q So they would be closed Tuesday evenings, Thursday and Friday evenings and Saturday evenings?

A. Correct.

Q. NOw, when you came to work on the 19th Mr. HOlleran told you that you were definitely terminated?

A. Correct.

Q. And that your schedule did not--was not adequate for the downtown store?

A. Right.

Q. That he was personally hurt?

A. Yes, he was. He had spent from eight o'clock until eleven o'clock with Mr. Holmes that morning talking about me and talking about how sorry he was that I wasn't able to stay with Florsheim and also that if a later date came up, like after I began my college, to give him a call.

Q I understand that in February Mr. Holleran--excuse me, in February Mr. Holleran called and asked you whether you could work at South Hills?

A. Yes.

Q. Full-time?

A. Yes.

Q. You told him you couldn't fit that into your schedule?

A. Correct. I also said that it wouldn't be a wise move for me right now.

Q. You said that?

A. Yes.

Q. Also there was another call concerning a full-time job at Northway?

A. Correct.

Q. Again, who called you on that?

A. Mr. Holleran.

Q. Again, you said you could not because of your school schedule?

A. Correct.

Q. WEre both of these calls in February?

A. The last one is a recent one, I can't remember off hand, Mr. Christensen was just transferred back up to Erie, PA.

Q. What about the first one?

A. The first one was in February.

Q. And the last one was also then at the end of February?

A. Recently.

Q. It wasn't since Monday, was it?

A. No, not that recent.

JUDGE NACHMAN: Within the last two weeks?

THE WITNESS: I would say so.

Q. (By Mr. Dicker) The first one was in the beginning of February?

A. Around that time.

Q Were you present in the hearing room when Mr. Halliday testified?

A. Yes, I was.

Q When he testified about the conversation that you and he and Mr. Holleran had concerning unions one night in September?

A. Yes.

MR. DICKER: No further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: I have no questions of this witness.

JUDGE NACHMAN: Witness excused.

(Witness excused.)

JUDGE NACHMAN: CAll your next witness.

MR. LADOV: I call Gregory Koritsky. please.

Whereupon,

GREGORY KORITSKY

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

MR. DICKER: Let the record show that I am returning the affidavit of Mr. Corrigan.

I would like to ask the Administrative Law Judge to ask Mr. Koritsky if he was in the room this morning during the time there was testimony by Mr. Foreman and or Mr. Paranzino?

JUDGE NACHMAN: Mr. Koritsky, were you in the hearing room this morning while Mr. Foreman or Mr. Paranzino testified?

THE WITNESS: Were they the first two?

JUDGE NACHMAN: The first two this morning?

THE WITNESS: I was here through the first one and half of the second one.

MR. DICKER: I move that this witness not be allowed to testify as a witness that should have been excluded from the hearing room.

MR. LADOV: Your Honor, if I might--

JUDGE NACHMAN: I will make the same ruling that General counsel may examine this witness in the area of any card the witness may have signed, circumstances surrounding it and any independent conversation he may have had with any management officials, but not with any conversations with or that he ever heard involving Mr. Foreman or Mr. Paranzino.

MR. LADOV: Your Honor, thatwould be fine and I will just put on the record an objection to Mr. Dicker's objection in that he never brought this objection up regarding Mr. Flaherty when he testified, Your Honor.

MR. DICKER: If I overlooked Mr. Flaherty, I make the same application.

DIRECT EXAMINATION

Q (By Mr. Ladov) Your name and address, please.

A Gregory Koritsky, 502 Courtland Drive, McKeesrocks, PA.

MR. DICKER: In view of the fact that you make a partial ruling in my favor and partial not in my favor, I want the record clear--

JUDGE NACHMAN: Insofar as it is against you, you have an exception, had it without--

Q (By Mr. Ladov) Your name and address again.

A Gregory Koritsky, 502 Courtland Drive, McKeesrocks, PA.

Q By whom are you presently employed?

A I am presently employed by the Florsheim Shoe Company, I have been employed with them since November of 1974.

Q What is your job?

A I am the assistant manager there. I was hired as sort of like a trainee from out of school, when I came out of school. I gotthe job through a job application at school. I looked at that.

Q Where do you work, Mr. Koritsky?

A I work at the Northway Mall store.

JUDGE NACHMAN: Are you a full-time employee?

THE WITNESS: Yes, I am.

JUDGE NACHMAN: You have been, I suppose, for the last couple years?

THE WITNESS: Yes, sir.

Q (By Mr. Ladov) Have you been a full-time employee during your whole employment tenure at Florsheim?

A Yes, I have.

Q Your immediate supervisor is who?

A Jim Holleran.

Q Have you ever worked at any other store but the Northway Mall store?

A Yes, I have, I have worked down at the 200 Fifth Avenue store for a day as a fill in. They were short a person and I went down to pick some shoes up and I went down to work for them. Mr. Levine asked me if I'd work for them for a day and I said yes, I would.

Q Did you ever learn about the employees' efforts to organize a union?

A Yes, I have, I heard it from Jimmy Schneider, he called me about approximately a week before the applications were handed out. He just gave me a little bit of information like what it was, what Local it was and just general information on it. Said that he'll try to get some applications up, he asked me if I'd like to join. He did say that they are getting signatures but they are trying to get applications to get represented, to get the union to represent them.

Q Did he tell you the name of the union?

A. Yes, he did, it was Local 1407, I asked him what Local it was because I was in the union before.

Q. Which union?

A. Local 1407.

Q. Not where you were employed at Florsheim?

A. No, I was in that union when I was at Giant Eagle Markets.

Q. Did you ever execute a union authorization card?

A. Yes, I did.

Q. Would you describe the circumstances?

A. I was at home, I was called on the phone by my employees that were up at the store at the time working, Robert Corrigan and Andrew Halliday were working at the time. They called me and they asked, they said that they had applications up at the storeand they asked me if I was interested in signing, in making an application. I said yes, I would be and I would be up as soon as I can.

Q. Did you come up to the store that day?

A. Yes, I did.

Q. I'm sorry, when did this occur?

A. It was a Wednesday.

Q. What time of the day?

A. Towards the evening, I don't exactly remember the right time.

Q. You came up to the Northway store?

417a

A. Yes, I did.

MR. LADOV: I would like this marked as General Counsel's exhibit number twenty seven.

(The document above-referred to was marked General Counsel's exhibit No. 27 for identification.)

Q. (By Mr. Ladov) What--

JUDGE NACHMAN: You're telling me, I take it, that the notation in the upper part of this exhibit, GC#27, handwritten is not part of the exhibit?

MR. LADOV: It's no significant, there's no significance to it.

JUDGE NACHMAN: It's not a part of the exhibit as far as you're concerned?

MR. LADOV: No, Your Honor.

Q. (By Mr. Ladov) Can you identify that card?

A. Yes, I can.

Q. What is it?

A. It's the application that I signed the day that I went up to the store.

Q. Can you identify the signature?

A. Yes, that is my signature.

Q. Can you identify the date on that signature?

A. That's the date that I wrote in.

Q. Is that the date that you came up to the store?

A. Yes.

Q Is that the date you executed the card?

A. Yes.

JUDGE NACHMAN: Is all the handwritten material on that card except for the material in the upper-right hand corner in your handwriting?

THE WITNESS: No, it is not.

JUDGE NACHMAN: Which part of it is not in your handwriting?

THE WITNESS: My signature is mine. the dates are mine, the basic information like my name, where I live is filledin by my girlfriend, she filled that in with me standing right next to her.

Q (By Mr. Ladov) She was at the store with you when you came that evening?

A. Yes, she was there at the same time and like I said, I was standing right next to her while she was filling it out.

JUDGE NACHMAN: How about the legend about midway down the card that says Florsheim Shoe Company, is that in your handwriting?

THE WITNESS: I don't know.

JUDGE NACHMAN: It's printed?

THE WITNESS: No, that's not mine, no, I did not put that there.

JUDGE NACHMAN: Was it on the card when you signed it?

THE WITNESS: I don't remember.

Q (By Mr. Ladov) Did you read the card, Mr. Koritsky, before you signed it?

A. Yes, I did.

Q The whole card?

A. No, I didn't read the small print along the side, on the left-hand side.

Q You stated you were a former member of Retail Clerks Local 1407, when was this?

A. When I was employed with Giant Eagle Company, Giant Eagle Markets.

Q Had you ever signed a union authorization card prior to August 27th, 1975?

A. Yes, I had.

Q When?

A. When I was--after my probationary period at Giant Eagle I signed one.

MR.LADOV: I offer General Counsel's exhibit number twenty seven into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: GC#27 will be received.

(The document heretofore marked General Counsel's exhibit No. 27 was received into evidence.)

Q (By Mr. Ladov) Mr. Koritsky, did you ever discuss the employees' efforts to organize a union with any managers?

A. Yes, I have.

Q. Who?

A. Jim Holleran, my manager.

Q. When did you discuss this with Mr. Holleran?

A. Well, it was on a number of occasions, most of the time it was right after we signed the applications, about two weeks and after that very intermittently.

Q. Would you describe that first conversation, please?

A. Mr. Holleran asked me about the union and he knew that I was in the union before, he asked me what my feelings were toward it and I told him that I was for it, that I had nothing to hide, that the union representatives did tell us to tell the truth to the company if they did ask questions and I said very well, I had no plans on not telling the truth. He asked me basic information like did you sign it and I said yes, I signed an application. Did anybody else sign it? I said to the best of my knowledge I think everybody in the store did sign it.

Then the other conversations were that, they were based around the--

Q. Before we get into those, when did this first conversation occur that you just testified to?

A. Right after we signed, right after I signed the application, I really don't know the specific day but it was within the week's period.

Q Would a calendar help?

A. No.

JUDGE NACHMAN: Was it a matter of days after you signed this card or weeks?

THE WITNESS: DAys. Like I said, it was within the first week after.

JUDGE NACHMAN: Within the first week after?

THE WITNESS: Yes.

Q (By Mr. Laf [illegible] Where did this conversation occur?

A. IN the store, in the back room.

Q Was anyone else present?

A. No, no one else was present.

Q You said you have had other conversations with Mr. Holleran?

A. Yes, I have had conversations with him frequently about it, speaking of general things like how or what's going on. he was trying to ask me what was going on, how is everything coming along with the union. When he found out about a hearing with the National Labor Relations Board was in on it, he asked me about that.

Q Let's slow down for a second, when, can you recall, when he asked you how is everything coming or what's going on?

A. No, it's during the time we signed and now, because we would talk a day, he might not have said anything for a month. Then all of a sudden it would come up again.

Q. Where did these conversations occur?

A. All in the store.

Q. Mr. Koritsky, were you ever offered a transfer to another store?

A. Yes, I was.

Q. Would you describe the circumstances surrounding this offer?

A. Okay, I was offered when Mr. Holmes came into town. Mr. HOlmes and Jim Holleran were talking, Jim Holleran approached me and he asked me if I would like a transfer to the downtown stores, this was after Mr. Holmes came in and everyone was let go.

Q. When was this?

A. I think it was about the second or third week of September, I'm not really sure what day it was.

Q. Continue, please.

A. He did approach me and ask me if I would like to go down to one of thedowntown stores, that he thought it would be a better opportunity for me as I would get more experience down there, there would be more people to work with down there, I would have a District Manager down there, there would be more money for me down there.

Q. Down where?

A. Down at one of the downtown stores. There was no specific store mentioned where I'd go. I said, well, I wouldn't know about that, I would have to think about it. He said, okay, I'd have to know before tomorrow, he said call me anytime during the night and I decided, okay, I'll think about it and I went, drove around downtown for a while. Looked at both stores, I finally calledhim about twelve thirty, one o'clock that evening.

Q who did you call?

A. Jim at his home.

Q Jim?

A. HOlleran, at his home and I said yes, I'll take the job downtown. I decided that I would go downtown and he said okay, I'll tell Mr. Holmes tomorrow morning.

Q Did you decide right away that you would go and take the offer to go downtown?

A. No, I didn't. It took from the time that I left the store that night until about twelve thirty that evening to decide.

Q Did you go downtown, were you transferred?

A. No, I wasn't.

Q What happened?

A. That next morning Mr. HOlmes came in to the store with Jim. I was in the store a little bit early cleaning up, doing the work that needed to be done, like sweeping the floor, cleaning ashtrays and setting everything straight. Mr. Holmes and Jim HOlleran came into the store.

I said--I was all happy, I was ready to go downtown, Jim said to me, I said I'm ready to leave and he said well, you're not going, we decided it would be better for you to stay up at the Northway store, we need you more up here than we do downtown.

Q During the period that you just described regarding this offer of transfer, was Mr. Robert Corrigan discharged at this time?

A To the best of my knowledge he was.

Q Were you aware of this?

A Yes.

Q Did you have any conversations with Mr. Corrigan?

A Yes, I did, he told me that he was offered work to work in the store forty hours, he said okay, he told me that they approached him again and told him he'd have to work forty-eight hours and he said he would work. Then he told me that they told him he'd have to go downtown, to the best of my knowledge he would have done that, except that his schooling wouldn't permit him to work during the day because he had school during the day.

JUDBE NACHMAN: What is your theory about the relevance of this? Are you contending that this is a violation?

MR. LADOV: In regard to Mr. Corrigan, yes, Your Honor and to show again the part-timers, that Mr. Corrigan was ready, willing and able to work forty, forty-eight hours in the Northway Mall store--

JUDGE NACHMAN: You are not making the contension that this was a discriminatory refusal to transfer?

MR. LADOV: No, not at all, but there was someone available to go downtown.

Q (By Mr. Ladov) And you had discussed this problem, situation with Mr. Corrigan?

A. Yes, we discussed it.

Q Did you tell him that you had been offered a transfer downtown?

MR. DICKER: Objection.

JUDGE NACHMAN: It's a little on the leading side, you can rephrase it.

Q (By Mr. Ladov) Did you have any discussions with Mr. Corrigan at this time?

A. At what time?

Q The time you were offered a transfer to downtown?

A. Yes, I told him that I was offered to go downtown because we always talked about it.

JUDGE NACHMAN: You told Mr. Corrigan what Mr. Holleran had told you about going downtown?

THE WITNESS: I didn't say exactly, I told him that I was offered to go downtown and I was thinking about it.

Q (By Mr. Ladov) Did you ever discuss Mr. Corrigan's discharge with Mr. Holleran?

A Yes, I did.

Q Would you describe that conversation?

A Both Jim and I felt Mr. Corrigan was a good employee. There were times, especially around that time that I was working forty hours and he was working thirty hours and he was outselling me. I really felt that he was a good salesman. WE both felt that he shouldn't be left go, that we would practically do anything to keep him there at the store.

Q Practically do anything to keep him at the store, including accepting a transfer downtown?

A Yes.

MR. DICKER: I object.

JUDGE NACHMAN: That's a little far fetched, I sustain the objection.

Q (By Mr. Ladov) Mr. Koritsky, had you been offered any other transfers by Florsheim Shoes?

A Yes, I have.

Q Would you describe what transfer you have been offered?

A When Mr. HOlmes was in town, he offered me, the same day that he talked to me about the store and myfeelings, he offered me to go to Chicago to the Manager Training Program that they have there and at that time I turned him down because I wasn't really ready or didn't really--

JUDGE NACHMAN: You didn't want to go?

THE WITNESS: I didn't want to go at that time, yes.

Q (By Mr. Ladov) Have you ever--what is your status now regarding this transfer to Chicago, a promotion to Chicago?

A. As of right now, my new area person, Mr. Santoro, came into town and he asked me again if I would want to go to Chicago.

JUDGE NACHMAN: Who asked you?

THE WITNESS: Mr. Santoro, he is my area representative from the company. He asked me when he came into town if I would want to go because he heard from Mr. Holmes that I was interested. At that time I said yes, I would like to go and as of now I am waiting for a reply from them of when I'm leaving.

Q (By Mr. Ladov) When did Mr. Santoro ask you about going to Chicago?

A. He was in town a few--I really don't know when it was, but he was in town, he talked to a lot of the employees and he asked me if I would want to go and I said yes.

JUDGE NACHMAN: When was it that he was in town, was it several days ago, several weeks ago, several months ago?

THE WITNESS: It was months ago that he was in town.

MR. DICKER: I object to this whole line of questions.

JUDGE NACHMAN: I think it has some relevance.

MR. LADOV: No more questions, Your Honor.

MR. DICKER: May I ask the Board to produce any affidavits--

MS. KRIEGER: The Board does not have any affidavits.

MR. DICKER: May I have five minutes, it's the first time I have taken a break.

JUDGE NACHMAN: We have a lot of work to do today, but all right.

Off the record.

(Short recess was taken.)

JUDGE NACHMAN: On the record.

Proceed.

CROSS EXAMINATION

Q (By Mr. Dicker) Mr. Koritsky, you received initially a call from a Mr. Schneider concerning joining the union?

A Making application to the union, yes.

Q When was that, do you remember?

A It was approximately a week before the week that I signed the application.

Q You signed the application on August 27th?

A Yes.

Q So that was a week before, that would make it about August 20?

A I really don't know the date, like I said, it's approximately a week.

Q It wasn't a long conversation?

A No.

Q On the telephone?

A Yes.

Q And you were in the store?

A Yes.

Q And then you got a call on Wednesday evening, August 27th from Mr. Corrigan or Mr. Halliday?

A I got a call from them, yes.

Q Both?

A No, just one call.

Q Who called?

A Mr. Corrigan.

Q And asked you whether you were interested in signing a card?

A He explained that they had the application cards there and he asked me if I was interested, if I would come up and sign.

Q Do you live far from the Northway Center?

A It depends on how you think far is.

Q How long does it take you to get there?

A It takes anywhere between twenty minutes and half an hour to get there.

Q What time did you get this call?

A. I don't know, it was in the evening, early evening.

Q. Six o'clock, seven o'clock?

A. Before that.

Q. Before seven?

A. Yes.

Q. Before six?

A. I don't know.

Q. Then you went down to the Northway Center immediately?

A. Yes.

Q. Who was there besides yourself and Mr. Corrigan?

A. Andrew Halliday was there and my girlfriend.

Q. Was Mr. Belesky there?

A. No, he wasn't.

Q. YOu filled out the card or your girlfriend wrote in part of the items and you read it and signed it?

A. Yes.

Q. You didn't read the material to the left-hand side of your signature?

A. The small.

Q. I am referring to the left-hand side of the signature in the small print?

A. I did not read that.

Q. Now, you indicated that you were a member of Local 1407 before?

A. Yes, I was.

Q When you worked for the Giant Eagle?

A. Giant Eagle Markets.

Q Is that a food market?

A. A food chain in Pittsburgh, yes.

Q When did you work with the Giant Eagle Markets?

A. I worked on a number of occasions there.

Q When was the occasion that you worked there that you joined Local 1407?

A. It was my second employment there.

Q About when was that?

A. I can't remember the year, it was in March thoughof--

Q '72?

A. '73. I don't remember the year.

JUDGE NACHMAN: What does that have to do with this case?

MR. DICKER: WEll, Your Honor, it has to do with whether the witness knew what he was signing.

JUDGE NACHMAN: His employment with another company at another time.

MR. DICKER: Yes, Your Honor, apparently the witness-- General Counsel's theory, as near as I can make it out, is that although he may not have read the card, that he signed on--

MR. LADOV: Objection, Your Honor, I never said he didn't read the card.

JUDGE NACHMAN: We haven't reached a time for argument yet, but I'll ask General Counsel, are you contending that this gentleman understood that his prior membership in the union was enough to put him on notice--

MR. LADOV: No, Your Honor.

JUDGE NACHMAN: He is not so contending.

MR. DICKER: Okay, with that on the record, then I won't ask him about that.

I must say, I don't understand the questions that were asked about that on direct.

Q (By Mr. Dicker) After you signed this card on the 27th, what did you do with it, that is General Counsel's exhibit number twenty seven?

A I left it on the desk where it was, where I signed it, on the table.

Q Did you see anyone take it away?

A No, I left it there to Rob and here it is, this is where I left it, right here.

Q You left it on the desk when you walked away?

A Right.

Q You don't know what happened to it after that until you saw it today, is that right?

A No.

Q Do you know what happened to it?

A Yes.

Q What happened to it?

A It was given to the representatives from the union.

Q How do you know that?

A Because I seen it done.

Q When was that?

A We had a meeting, a general meeting at the local and I seen it then.

Q on September 4th?

A I don't remember the date.

Q Were the cards shown to that meeting on September 4th?

A They weren't shown, put up in the air and shown, this is yours, but I seen mine setting there.

Q You seen it setting there where, on a desk?

A Yes, with all the other ones.

Q Did you look through them to find yours?

A They were being paged through and I seen mine there.

Q Someone was paging through them and you sat alongside of them and observed?

A I was looking, yes.

Q That was in September though?

JUDGE NACHMAN: He said September 4th.

MR. DICKER: No, he didn't, he said he didn't know.

JUDGE NACHMAN: I understood him to say September 4th, maybe I misunderstood.

MR. DICKER: I think he said he didn't know, Your Honor.

JUDGE NACHMAN: The record will show what he said. Then I stand corrected.

Go ahead.

Q (By Mr. Dicker) When did you have the first conversation with Mr. Holleran concerning the union?

A Right after I signed the card, approximately within the week after I signedthe card.

Q You don't remember the date?

A No.

Q Could it have been as early as the 28th of August?

A No.

Q The 29th?

A No.

Q It was after that?

A I think it would have to be after that, yes.

Q And he asked you about the union, Mr. HOlleran?

A Yes.

Q What did he say?

A He asked me general questions, did you sign a card.

Q Did he ask you did you sign a card?

A Yes.

Q Is that the first thing he asked you?

A No, it was talk.

Q Did he ask you whether you were in favor of a union?

A Yes.

Q. Isn't that the first thing he asked you, whether you were in favor of the union?

A. I don't know.

Q. But you do know he asked you whether you signed the card?

A. Yes, he did.

Q. You are sure of that?

A. Absolutely positive.

Q. But you're not sure of whether or not he asked you whether you were in favor of the union?

A. He did ask me that.

Q. He did?

A. Yes.

Q. This conversation occurred in the back room of the store?

A. Yes.

Q. And you had then several other conversations concerning the union with Mr. Holleran?

A. As of then?

Q. No, from that time until now?

A. Yes, I have had conversations with him about it.

Q. At any time did Mr. Holleran say you were going to be fired because you signed a card?

JUDGE NACHMAN: General Counsel does not so contend.

MR. DICKER: There are a lot of alleged 8(a)(1's) and there were a lot of questions in--

JUDGE NACHMAN: General Counsel's doesn't contend that this witness was threatened with firing because he signed the card.

MR. DICKER: Your Honor, I think I'm able to develop through this witness a defense concerning the alleged 8(a)(1's).

JUDGE NACHMAN: Go ahead.

Q (By Mr. Dicker) Were you told whether or not--strike that.

Did Mr. Holleran state to you that you would be fired because of your union activity?

A He said there was a possibility.

Q A possiblity that you would be fired?

A WEll, that I could be, yes.

Q When did he say that?

A Within that week afterwards, the same--

Q During the same conversation?

A Yes.

Q Anything else you remember about that conversation?

MR. LADOV: I don't think the record is clear, what conversation is Mr. Dicker referring to?

MR. DICKER: The conversation that occurred in the first week.

JUDGE NACHMAN: Within the week following the signing of the card.

MR. DICKER: Yes, Your Honor.

Q. (By Mr. Dicker) Anything else you remember about that conversation?

A. Yes, he did say why didn't you come to the company first and that the company, he told me that there were bad points about a union, that you have to pay union dues and initiation fees and things like that. There are times when a union can be worse than working something out with the company.

Q. This was all in that conversation within the first week after you signed the card?

A. Yes.

Q. When was this offer made to you to transfer to another store?

A. Transfer to another store?

Q. Yes, when was that, was that about the middle of September, did you say?

A. It was at the time when Mr. Holmes came in and the people were let go, the employees were let go. It was at that time.

Q. Did Mr. Holmes make that offer or did Mr. HOlleran make the offer?

A. Mr. Holleran made the offer.

Q. Did he ask you whether or not you would work downtown?

A. Yes.

Q. Then you contemplated and then called him back and said you would?

A. Yes.

Q. Now, when you spoke to Mr. Corrigan about his discharge, when was that?

A. It was at the time that he was discharged.

Q. That would be towards, well, during the third week of September?

A. Yes, I'd say around there.

Q. Did Mr. Corrigan tell you that they wanted him--excuse, me, did Mr. Corrigan tell you that they wanted him to work in the downtown store?

A. Yes, he mentioned it to me, that he was offered to go downtown after he talked to Mr. Holmes about it.

Q. did he tell you why he had been terminated?

A. Yes.

Q. What did he tell you?

A. He said that he couldn't do it because Mr. Holmes felt he couldn't do it because of his schedule at school.

Q. His schedule at school?

A. To work downtown, yes.

MR. DICKER: I have nothing further.

JUDGE NACHMAN: Redirect?

MR. LADOV: Nothing.

JUDGE NACHMAN: You're excused, sir.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. LADOV: I call Richard Furis, please.

Whereupon,

RICHARD FURIS

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

JUDGE NACHMAN: Be seated.

DIRECT EXAMINATION

Q (By Mr. Ladov) State your name and address.

A Richard D. Furis, 231 Irwin Avenue, Apartment number three, BelView, PA 15202.

Q Were you ever employed by Florsheim Shoe Company?

A Yes, sir, I was.

Q Would you trace your employment history at Florsheim, please?

A Yes, sir, shortly after graduation in May, 1973, from Duquesne University I learned that out at the Northway Mall Store they would be needing some part-time help. I went out to the NOrthway Mall Store, talked to Mr. Rosenberry who was then the manager and informed him of my situation. I had already accepted a full-time job. I would have to undergo a security clearance for this job and my employers would not tell me exactly the date that I would start. I, toldhim that this was the condition for my employment and could he still use me. He said yes, that he could. I started working there then in July of 1973, worked approximataly about twenty to thirty hours until December of '73, which I started my other job which I currently hold at Westinghouse Electric Corporation, Bettis Atomic Power Lab and from there on out I was cut down to two or three nights a week, which I worked up until January of 1975, which I started to go back to school at Duquesne University.

From there on out I was reduced even further to just a night or two a week and I worked up until the middle of September, 1975.

Q When were you discharged?

A The middle of September, 1975, I don't know the exact date, other than what I have heard in the courtroom.

Q Where did you work, Mr. Furis?

A Northway Mall store.

Q Who was your immediate supervisor at the time of your discharge?

A Mr. Holleran.

Q As a part-time employee, what was your rate of pay?

A One dollar an hour, plus 5 percent, 5 percent and 3.

Q Did you ever become aware of the employees' efforts to organize a union at Florsheim Shoes?

A Yes, sir, I did.

Late July or early August Mr. Koritsky--

Q Is that 1975?

A Yes, sir, Mr. Koritsky approached me out on the sales floor and told me that the guys in the Pittsburgh area were trying to form a union and asked me what my opinion was on this, to which I answered him that due to my circumstances I didn't want to get actively involved, but I could sympathize with the plight of the full-time guys. If I had to do that on a full-time basis to support my family, I just couldn't make it.

He further stressed that they need a majority of the people to show union interest and I said I would not stand in their way and that was the end of the conversation.

He did also, in connection with this conversation, go over some of the benefits of the union and what they were trying to do.

Q Where did this conversation occur?

A Northway Mall store on the sales floor.

Q Was there anyone present?

A At the beginning of the conversation, I believe there was only Koritsky and I, I can't remember if Mr.Corrigan was there or not. He may have been leaving the store or just stopped in the store, I don't even remember if he was working. He might have been there, I can't remember.

Q Did Mr. Holleran ever ask you about the union?

A Yes, sir, he did, on two occasions.

Q Would you describe the first occasion,please?

A Yes, sir, shortly after Mr. Koritsky talked to me, it must have been a couple of weeks, I had--I was coming in. I usually worked on a Saturday at this time, I was coming in and Mr. Holleran was just about leaving the store. We were in the back room and he said to me, he approached me with a very short statement, he said did Greg talk to you about a union, to which I said yes. That was the end of the conversation and he was leaving the store.

Q When did this conversation occur?

A As I said, it occurred approximately a couple of weeks after Mr. Koritsky first talked to me about the union which was either late July or early August.

Q 1975?

MR. NACHMAN: Some time during the month of August?

THE WITNESS: Yes, sir.

Q (By Mr. Ladov) What part of the month of August?

A Towards the middle, it must have been a Saturday because it's the only time I was working.

Q Was it Saturday, August 30th?

MR. DICKER: Objection.

JUDGE NACHMAN: You are leading the witness.

MR. DICKER: Your Honor, this happens all the time.

Q (By Mr. Ladov) Mr. Furis--

JUDGE NACHMAN: All I can do is act on the questions asked.

MR. DICKER: The Board has a responsibility here and General Counsel has a responsibility here to--

MR. LADOV: I'm certainly trying to uphold my responsibilities as best I can, Your Honor.

Q (By Mr. Ladov) When did that conversation occur?

A Which conversation?

Q The first conversation with Mr. Holleran?

A As I said, it happened around a couple of weeks after Mr. Koritsky talked to me, the middle of August.

Q Was anyone else present?

JUDGE NACHMAN: You feel it occurred on a Saturday?

THE WITNESS: Yes, sir, I feel it occurred on a Saturday because at that time that's the only day I was working.

Q (By Mr. Ladov) You mentioned another conversation with Mr. Holleran?

A Yes, sir, in late August or early September, I think it was more early September, again, it was on a Saturday.

Q Would you describe that conversation?

A Yes, I came in to the store, Mr. Holleran was still there at the store. We were in the back, in the stockroom, Mr. Holleran again approached me and he said, Rich, you have been here really longer than I have, you seem like a level-headed individual, could you do me a favor, I'm really concerned about our store, would you go and talk to the other part-time people about what could happen to all of us if the union would come in. Some of the specific, I can't say specific, the general nature of the two things that I remember, he was talking about was a loss in the flexibility of hours. Our store always operated under kind of a goodtrading situation where if you couldn't work, someone else would work for you and so forth. We work it out pretty good.

Another thing that he mentioned was possible reduction in the part-time work force. He asked me would I goto the part-time people and talk to them about what could happen if a union come in. I told him the same thing I told Koritsky, I'm really not interested in getting involved, no, I wouldn't do that.

That was the end of the conversation.

JUDGE NACHMAN: Did that conversation occur before or after that one on the Saturday that you just mentioned?

THE WITNESS: After.

JUDGE NACHMAN: About how long after?

THE WITNESS: A couple of weeks, it was in the first part of September or late August.

JUDGE NACHMAN: Did that also occur on a Saturday?

THE WITNESS: Yes, sir, to the best of my recollection since I was there only on Saturdays.

Q (By Mr. Ladov) Where did that conversation occur?

A. In the stockroom of the NOrthway Mall store.

Q Was anyone else present?

A. Not in the stockroom, there might have been either Koritsky or Corrigan was out on the sales fcoor, I don't remember.

Q You have testified you were discharged some time in mid-September?

A. Yes, sir.

Q Could you describe the circumstances surrounding that discharge?

A. Yes, in the middle of September I belive it was on a Friday, I don't remember the exact date, if I had the calendar it might help.

I believe it must have been August the 15th, it was a Friday, I was scheduled to work the 16th.

Q Your discharge?

A. My discharge, I'm sorry, it must have been the 12th of SEptember because I was scheduled to work the 13th of September, which was a Friday evening, I called Mr. HOlleran and there had been some confusion over what time I was to come in on Saturdays. Like I would come in at four o'clock or five o'clock depending on how late he intended to keep the other employee there. We only wanted to keep two in the evening.

I said to him, Jim, what time should I come in, should I come in tomorrow at four o'clock or five o'clock. He said, Rich, I'm sorry about this, I'll tell you, you don't have to come in tomorrow anymore. All H's part-time employees in the city of Pittsburgh are terminated.

I said, oh., okay. That was the end of our conversation.

Q Prior to this conversation, did you ever have Mr. Holleran--had Mr. HOlleran ever told you anything about discharging all of the part-time employees in Pittsburgh?

A No, sir.

Q WEre you offered a full-time job at this time?

A No, sir.

Q Were you ever offered a full-time job at Florsheim?

A No, sir.

Q Mr. Furis, you testified to a good deal of flexibility between the hours, could you explain that, what you mean by that?

A Well, we had quite a few people at the store, as you can realize, going to school and so forth, there would be maybe a couple of Saturdays where Icouldn't work, Mr. Messenge has mentioned before in previous testimony here in court, I would ask him if he would work for me and he would say yes. Other times come up when he was scheduled to work, he couldn't make it, I would work for him, things of this nature. That is the kind of thing that I thought Mr. Holleran was referring to that our particular store operated in what he considered a smooth manner, people got along, that type of thing.

MR. LADOV: I have no more questions, Your Honor.

MR. DICKER: May I ask the Board to produce any statements the witness may have given or may have adopted?

MS. KRIEGER: This witness has not given any statement at all. He has not given any sworn statement or written statement.

JUDGE NACHMAN: YOu have no statementof any kind from the witness?

MS. KRIEGER: No.

CROSS EXAMINATION

Q (By Mr. Dicker) It was some time in July or August that you said Mr. Koritsky approached you concerning the union?

A Yes, sir, late July or early August.

Q Did he give you a card to sign?

MR. LADOV: Objection, beyond the scope of direct.

JUDGE NACHMAN: He didn't ask anything about signing a card.

MR. DICKER: I don't understand that that precludes me.

JUDGE NACHMAN: The rules say that cross examination shall be confined to the scope of the direct, especially to specify incidents, this is not one of them.

MR. DICKER: Well, Your Honor, I think that cross examination certainly allows a little leeway when talking about a conversation which he had with a witness that was open on direct and I'm asking if certain things were done during that conversation. If I can't ask that, I can't ask anything on cross.

JUDGE NACHMAN: Yes, you can, there are a lot of questions you can ask if you wish to ask them. The witness was not asked anything about signing a card on direct examination.

MR. DICKER: Your Honor, I'm asking him about a conversation he had on cross examination. I can ask a lot of hypothetical questions as to whether he was given something or not.

JUDGE NACHMAN: Not if it's outside the scope of direct.

MR. DICKER: Then am I to understand that the witness wasn't asked about a conversation with Mr. Koritsky in July or August?

JUDGE NACHMAN: You can ask him about the conversation.

MR. DICKER: Well, I am asking about that conversation, Your Honor.

JUDGE NACHMAN: Counsel, don't argue with me, I have ruled, you just proceed.

MR. DICKER: Your Honor, I think you precluded my cross examination.

JUDGE NACHMAN: You just proceed on the basis of my ruling.

MR. DICKER: You make it very difficult, Your Honor.

Q (By Mr.Dicker) Will you tell us what that conversation was about in July or August--I'll with draw that.

When was the conversation?

MR. LADOV: Excuse me, could I go off the record and approach the bench for a second, please?

JUDGE NACHMAN: Yes.

Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

Q (By Mr. Dicker) Mr. Furis, you had a conversation with Mr. Koritsky?

A Yes, sir.

Q When was that, was it concerning the union?

A Yes.

Q. When was that conversation?

A. It was in late July or early August of 1975.

Q. You don't remember the date?

A. No, sir.

Q. Was it on a Saturday?

A. It was probably on a Saturday, yes, sir.

Q. Would the calendar help you refresh your recollection as to the date?

A. It might.

MR. DICKER: May I approach the witness to show him the calendar, Your Honor?

JUDGE NACHMAN: Yes.

Q. (By Mr.Dicker) Does that help you refresh your recollection?

A. July is not on here, but then again, I feel it's July or early August.

JUDGE NACHMAN: Here is a calendar with July on it.

THE WITNESS: Well, you know, I could narrow it down to the 26th of July or the 2nd of August.

JUDGE NACHMAN: It was one of those two dates to your best recollection?

THE WITNESS: Or it could be the 9th of August, early August.

Q. (By Mr. Dicker) One of those three days?

A. Yes.

Q During that conversation, who was present besides you and Mr. Koritsky, if anyone?

A When the conversation first started it was just Koritsky and I. It was out on the sales floor, as I testified previously, Mr. Corrigan could have come in or out, I can't remember. He wasn't there when the conversation started.

Q You don't remember whether he joined you later?

A He didn't join us inthe conversation, but he could have been in the store.

Q Can you tell us what Mr. Koritsky said to you and what you said to Mr. Koritsky?

A Yes, Mr. Koritsky told me that the employees of the Florsheim Shoe Store were attempting to form a union and asked me what I thoughtabout it and I told him that due to my circumstances I wasn't interested in really getting involved, but that I could sympathize with their plight since I have a family, if I hed to support my family on what he as a full-timer was making, I could not do it and he told me that the union, in order to get representation, must have a clear majority and that they would need my help. I told him at this time I would not stand in his way.

Q Did he tell you what kind of help he needed from you?

A He told me that he would need me to sign a petition or application so they could have a union election.

Q Did he tell you anything else?

A. No, sir.

Q Did he give you anything?

A. No, sir.

Well, he did tell me some of the benefits of the union as I testified before, but nothing specific.

Q You told him you wouldn't stand in his way?

A. Yes, sir.

Q Did you tell him you would sign this petition or card?

A. I told him I wouldn't stand in his way. He told me it was required and I told him that I wouldn't stand in his way and that's exactly what I told him.

Q Now, between--who--you had two conversations with Mr. Holleran about the union, is that right?

A. Yes, sir.

Q Between the time you had the first conversation with Mr. Koritsky --

A. It was one of three days.

Q Between the time you had that conversation with Mr. Koritsky in late July or early August and the time you had a conversation with Mr. HOlleran, did you have any other conversations with any other employees concerning the union?

A. Not to my recollection.

Q Thereafter, Mr. Holleran--this is on a Saturday that you spoke to Mr. Holleran?

A. Yes, sir.

Q. Mid-August you say?

A. Yes, sir.

Q. Would that be--

A. It seems to me like it would be the 16th or the 23rd.

Q. Did Mr. Holleran work on Saturdays?

A. He does not work Saturday evenings, however, he does stay around late in the afternoon, usually to see if everybody is there.

Q. In the time you have worked there you saw Mr. Holleran working most Saturdays during the day?

A. I wasn't there during the day, sir, I didn't start until four or five o'clock.

Q. YOu came in at four or five o'clock on Saturday, was Mr. HOlleran there?

A. Which date, sir?

Q. During the period of July and August, 1975?

A. Sometimes he was and sometimes he wasn't.

Q. What percentage approximately, half the time?

A. Roughly half the time.

Q. But he was there on this Saturday, he was about to leave?

A. Yes, sir.

Q And you got in around at four thirty or so, four o'clock?

A. Between four and five o'clock.

Q And he asked you whether Greg spoke to you about the union?

A. He asked me, has Greg talked to you about a union.

Q Did you know who he was referring to when he said Greg?

A. Yes, sir, Mr. Koritsky.

Q Then a few weeks later you again spoke to Mr. Holleran?

A. Yes, sir.

Q It was early September you said?

A. Yes, sir.

Q Would that be--

A. 6th through the 13th.

Q During that conversation what time did you getin that day?

A. Four--between four and five o'clock.

Q Mr. Holleran was still there?

A. Yes, sir.

Q He wasn't rushingout at that time?

A. He was done work for the day, since I had come in, he didn't seem like he was rushing out, it seemed like he wanted to see me.

Q All right, he asked you to talk to the other part-timers about the union?

A Yes, sir, he asked me to talk about what could happen to our particular store if the union would get in.

Q What did he say could happen?

A He referred to the general nature of his conversation, referred to a possible reduction in the work force, loss of flexibility in our working hours.

Q He talked about those two things together, loss of flexibility and reduction of work force?

A Those are the things that stick in my mind.

Q They talked about in the same--

A Same conversation, yes.

JUDGE NACHMAN: What do you mean, what was the reduction work force that he mentioned, did he refer to any particular individuals or type of individuals?

THE WITNESS: The other part-time employees at the store, Mr. Messenger, Mr. Halliday, Mr. Corrigan, he asked me to talk to the other part-time people. He considered me to be a level-headed individual and I assumed that's who he was talking about when he said a possible reduction in the part-time work force.

Q (By Mr. Dicker) Talking about what?

A The otherpart-time employees.

Q That he was talking about you?

A Possibly, yes, since I'm a part-time employee.

Q He also talked about the loss of flexibility of hours if there was a union?

A Yes, sir.

Q Did he ask you whether you were in favor of the union?

A No, sir.

Q Did he ask you whether you signed a card?

A No, sir.

Q You received a phone call at home, I think it was on September 12th?

A Yes, sir.

Q And it was from Mr. Holleran?

A No, sir, that's not right, I'll amend that, I called Mr. HOlleran on September 12th to check--

Q Concerning what time you were supposed to report the next day?

A Yes, sir.

Q He said don't come in on Saturday, the company is getting rid of all the part-timers in Pittsburgh?

A Yes, sir.

Q Anything else in the conversation?

A He was really sorry about it and it was nothing personal.

Q Did he talk to you about whether you were availble to work full-time?

A. No, sir.

Q. Didn't ask you that at all?

A. No, sir.

MR. DICKER: No further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No, Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

JUDGE NACHMAN: Call your next witness, please.

MR. LADOV: I call Mr. Belesky, please.

Whereupon,

ROBERT BELESKY

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Ladov) State your name and address, please.

A. My name is Robert Belesky, 201 Carson Street, East McKeesport, Pennsylvania 15035.

Q. Were you ever employed by Florsheim Shoes?

A. Yes, sir, I was.

Q. Would you trace your employment history?

A. I was hired on September 15th, 1972 and I was employed as a porter at that time with an hourly rate of$1.65 an hour and I was terminated on September 18th, 1975, and I was a salesman at that time and getting a dollar an hour, 5, 3, and 5.

Q During these just a little over three years, three years and three days, did you always work as a part-time employee?

A. Yes, I did.

Q Were you hired as a part-time employee?

A. Yes, sir, I was.

Q Do you hold another full-time job?

A. No, sir, I'm a student.

Q At the time of your--at the time you began your employment with Florsheim, were you a student at that time?

A. Yes, sir, I was a high school student at that time, full-time and I graduated in 1974 and then went on to Penn State that fall, as a full-time college student.

Q Who was your supervisor?

A. My supervisor when I was hired was Mr. Bud Brower and at my time of discharge was Mr. Ron Moran..

Q Which store did you work?

A. Monroeville Mall.

Q At the time of your hire were you asked, did you inform Mr. Brower that you were a full-time high school student?

A. He knew it, my brother had worked before, he knew.

Q Had you ever told Mr. Moran that you were a full-time student at Pennsylvania State University?

A He also knew I was a student.

Q Did you ever tell him that?

A Yes, sir, I did.

Q During the year 1975 you worked as a part-time salesman?

A Yes, sir.

Q What was your schedule?

A My schedule was, it varied quite a bit, usually twelve hours a week during my school term and in the summer anywhere up to forty hours a week sometimes, but I was considered part-time with a dollar an hour base.

Basically Thursday nights during my school--that's Friday s and Saturdays, excuse me.

MR. DICKER: I'm sorry, Thursday night and Saturday?

THE WITNESS: Thursday night and Saturday.

Q (By Mr. Ladov) Mr. Belesky, did you ever learn of an employee effort to organize a union at Florsheim Shoes?

A Yes, sir.

Q Would you describe how you learned about this ?

A I learned of it through conversations with Mr. Joe Oseelburn and Mr. Macko.

Q When were these conversations?

A In early March, early or the middle of March. They had kicked the matter around and they asked, they said they had scheduled a meeting with the representative of the union, Mr. Best and they asked if I would attend it and I did so.

Q Where was this meeting?

A the meeting was held at Schrafts' Bar in Monroeville.

Q When?

A March 26th, I believe.

Q At what time?

A It was after work, approximately ten o'clock.

Q Who was present during this meeting?

A Myself, Mr. Osselburn, Mr. Macko and Mr. Best.

Q Did you execute a union authorization card at this time?

A Yes, sir, I did.

Q When were you discharged from Florsheim Shoes?

A I was discharged on September 18th.

Q 1975?

A 1975.

Q Could you describe the circumstances of your discharge?

A I had school that day until about two thirty, three o'clock and I came home and no sooner had my books, the phone rang and my mother answered and told me it was Ron, Mr. Brower and I answered the phone and Ron said I have to ask you if you can work forty to forty eight hours and I said I can't, you know I can't. He said, then I have to layyou off. Then he asked if Mr. Sarver was home and I told him that he had class yet, that he would be home later in the evening. He said I have to call him as well.

I asked him if all of the part-time people, if anyone else was being laid off and he said that everyone in the city was.

Q Everyone in the city?

A Everyone part-time in the city.

Q Prior to--

A I may add--

JUDGE NACHMAN: There is no question pending.

Q (By Mr. Ladov) Was there anything else said during that conversation?

A The only other thing said was, I asked him who was working that night since I was working that, it was a Thursday and he said that there were two people coming in from out of town.

Q Prior to September 18th, 1975, had Mr. Moran ever spoken to you about the termination of all part-time employees, prior to September 18th, 1975?

A No, sir.

Q Had you ever heard about that before?

A No.

JUDGE NACHMAN: Off the record.

JUDGE NACHMAN: On the record.

Q (by Mr. Ladov) Mr. Belesky, have you ever discussed the union or your union activities with any managers at Florsheim Shoe Stores?

A. Yes sir, I did.

Q Would you describe that?

A. It was after I was discharged. I had gone up to the mall, I had nothing else on Saturdays to do more or less, and I was up there. I can't remember the exact date. I stopped into the store to see how Ron was doing. To talk about general, just general run of the mill type things.

Q Ron who?

A. Ron Moran, my former manager. He asked me if I had supported the union, and I said yes. He said did I sign a card, and I said yes I had. He then asked if Mr. Sarver had signed a card, and I said yes also. He then asked if I knew of anyone else that had signed and I told him that I did not know. I did, but I would not tell him.

Q Did anything else occur during this conversation?

A. Nothing except just talk about how his family was.

Q Mr. Belesky, when did this conversation occur?

A. Saturday, as I stated after my discharge.

Q How long after your discharge approximately?

A. No longer than a week. It had to be either the 20th or the 27th of September.

Q 1975?

A. Yes sir.

MR. LADOV: I have no more questions of this witness Your Honor.

JUDGE NACHMAN: Cross examine.

MR. DICKER: May I ask whether or not this witness has supplied an affidavit or adopted a statement?

MS. KRIEGER: Yes he has, and here it is.

MR. DICKER: May I have a few minutes?

JUDGE NACHMAN: Yes.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

CROSS EXAMINATION

Q (by Mr. Dicker) Mr. Belesky, you said that you attended a meeting in early or the middle of March with Mr. Osselburn, Mr. Macko, Mr. Best, at Schraft's Bar in Monroeville?

A. It was late March sir.

Q It was after work, after 10:00 o'clock?

A. Yes sir, it was. In the evening.

Q What day of that week was that, Thursday or Saturday?

A. I really couldn't -- I'm not sure.

Q How long did that meeting last?

A. The meeting lasted until approximately 11:00 o'clock.

Q An hour?

A Yes.

Q Did you have anything to drink during that meeting?

A No sir, I don't drink.

Q You said you executed a union authorization card?

A Yes I did.

Q Did you read it?

A Yes I did.

Q Including the writing on the left of your signature?

A I read everything. My father taught me to read everything before I sign it.

Q Did you have school the next morning?

A Not that I recall.

Q Was the meeting on a Saturday night then?

A Like I said, I really am not sure sir of the day. The date I can remember, the day I can not.

Q Do you remember the meeting, you remember you read the card?

A Yes.

Q You also remember you didn't have school that morning?

A I'm not sure of that. My school schedule varies. Sometimes I go in late. I don't always go mornings. If I was late I still could have been ready for school the next day.

Q From the time you signed that card in March through

September 13th, did you talk to any company official about the union?

A. no sir.

Q Did any company official talk to you about the union?

A. No sir.

Q Did Mr. Moran talk to you about the union?

A No.

Q You got a call from Mr. Moran on September 18th, and he asked you whether you could work forty or forty-eight hours?

A. Yes sir.

Q You told him that he knew you couldn't?

A. Yes.

Q Then he asked whether Sarver was home?

A Yes.

Q How would you know whether Sarver was home?

A. He goes to the same school that I do.

Q Then he told you in response to any questions that everyone part time in the city is being laid off?

A. That's correct.

Q It wasn't until after you were discharged that you had a conversation with Mr. Moran about the union?

A. That's right.

Q That wasthe first time whether he had asked you whether you had signed a card?

A. That's right.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

MR. DICKER: May the record show that I am returning the affidavit of Mr. Balesky to the Board.

MR. LADOV: I would like to call Mr. Sarver please to the stand.

Whereupon,

MICHAEL SARVER

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (by Mr. Ladov) Would you state your name and address please?

A. Michael Todd Sarver, 933 Broadway, East McKeesport, Pa.15035.

JUDGE NACHMAN: Speak up good and loud please so that we can all hear you.

Q. (by Mr. Ladov) Were you ever employed by Florsheim Shoes?

A. Yes I was.

Q Would you trace your employment history for us please?

A I was employed in the fall of '73 and laid off in the fall of '74, and reinstated again in the spring of '75, and then terminated in the fall of '75.

Q When were you terminated?

JUDGE NACEMAN: You mean your last termination?

THE WITNESS: The fall of '75.

Q (by Mr. Ladov) Do you remember the date?

A September 18th.

Q During both employments with Florsheim, what was your job?

A My first employment was a stock boy.

Q Full time orpart time?

A Part time, I did a little bit of selling in the evening, and the next time I was brought in as salesman and I did stock work too.

Q Full time or part time?

A Part time.

Q Where did you work?

A Monrceville Store.

Q When did you begin your second period of employment with Florsheim?

A I believe it was the in the spring of '75.

Q Were you rehired as a part time employee?

A. Yes.

Q Were you working a full time job at that time?

A. No.

Q What were you doing?

A Going to school.

Q Full time?

A. Yes.

Q Who did you speak to regarding returning to Florsheim in the spring of '75?

A. Mr. Moran.

Q Did you inform Mr. Moran that you were going to school full time?

A Yes, he knew it.

Q You worked at which store Mr. Sarver?

A Monroeville.

Q What was your rate of pay?

A At first it was $1.65, then I went to $2.00 with the minimum wage thing, then when I was a salesman it was a dollar an hour plus commission.

Q Did you ever learn about the employees attempts to organize a union at Florsheim Shoes?

A Yes I did.

Q Would you describe the circumstances to the Judge please?

A I talked to Mr. Joe Osselburn, he asked me if I was interested and I said yes I was interested, because my dad's in the union, and I said we would be in the poorhouse, cause like I know the benefits. It helps us out.

Q. When did this occur?

A. I think March of '75.

Q. Did you ever sign a union authorization card?

A. Yes I did.

MR. LADOV: I would like this marked as General Counsel's exhibit number 28 please.

(The document above-referred to was marked General Counsel's Exhibit No. 28 for identification.)

Q. (by Mr. Ladov) I show you what's been marked as General Counsel's exhibit number 28 Mr. Sarver, can you identify that?

A. Yes. This is the form I filled out to join the union.

Q. Who gave you that?

A. Mr. Osselburn.

Q. When?

A. When I came to work he gave it to me, asked if I wanted to sign it, read it and fill it out.

Q. Can you identify the signature on that card?

A. Yes, that's mine.

Q. Can you identify the date on the card?

A. Yes.

Q. What is that date?

A. August 6th, 1975.

Q. Is that the day Mr. Osselburn gave you the card?

A. Yes it is.

Q. Did you read the card?

A. Yes.

Q. The whole card before signing it?

A. Yes I skimmed through it, the fine print and all.

JUDGE NACHMAN: How about the portion, the fine print to the left of your signature, did you read that?

THE WITNESS: Yes, I skimmed through it.

Q. (by Mr. Ladov) What did you do after you executed this card? After you signed this card?

A. Gave it back to Mr. Osselburn.

MR. LADOV: I offer General Counsel's exhibit number 28 into evidence.

MR. DICKER: No objection.

JUDGE NACHMAN: General Counsel's 28 will be received.

(The document heretofore marked as General Counsel's Exhibit No. 28 was received in evidence.)

Q. (by Mr. Ladov) You have testified you were discharged on September 18th, 1975?

A. Yes.

Q. Would you describe the circumstances surrounding your discharge?

A. I came home from school, I got a call from Mr. Moran and he asked me if I could work full time, and I said no, you know I can't because I have to go to school. He said well, I'll have to let you go then. He said I'm sorry, but I'll have to let you go and if you need any references or anything, let them know, that he'll give me a good reference.

I also asked if Bob Belesky, if he was dismissed or not and he said yes. I said well, who's going to work then, and he said well, they already have two people at the hotel they're bringing in this evening to work.

Q Did anything else occur during this conversation?

A Not that I can remember, no.

MR. LADOV: No more questions Your Honor.

JUDGE NACHMAN: Cross examine.

MR. DICKER: Did the witness give the Board an affidavit or statement?

MS. KRIEGER: No.

MR. DICKER: May I see the original of General Counsel's 28?

CROSS EXAMINATION

Q (by Mr. Dicker) Would you take a look at this card again please?

A Yes.

Q On the upper portion of the card there is an x and your signature, is that right?

A. Right here?

Q. Yes.

A. Yes.

Q. On that upper portion is also date?

A. Where, here?

Q. Yes.

A. Yes.

Q. What date is that?

A. August 6th, 1975.

Q. When did you sign that card?

A. August 6th.

Q. Then what did you do with it?

A. Gave it to Mr. Csselburn.

Q. Did you get it back again?

A. No.

Q. Take a look at the bottom half of that, is that your signature?

A. Yes.

Q. What's the date next to that?

A. August 8th, 1975.

Q. I ask you again, did you ever get the card back?

A. No.

Q. When did you sign that card?

A. August 8th, 1975.

Q. August 8th or August 6th?

A I really can't remember.

JUDGE NACHMAN: Are the figures there 3/3/75, is that your handwriting?

THE WITNESS: Yes.

Q (by Mr. Dicker) Is the signature on the top your signature? The first signature on the top half of the card?

A I don't think so, no.

Q That is not your signature?

A I don't think so, no.

MR. DICKER: No further questions of this witness.

JUDGE NACHMAN: Any redirect?

REDIRECT EXAMINATION

Q (by Mr. Ladov) Mr Sarver, point to where it says applicant's signature. Whose signature is that Mr. Sarver?

JUDGE NACHMAN: If you know.

Q (by Mr. Ladov) If you know?

A Which, this one or this one?

JUDGE NACHMAN: The one at the top.

THE WITNESS: That's my signature there.

JUDGE NACHMAN: Did you sign it?

THE WITNESS: Yes.

Q (by Mr. Ladov) Whose signature is at the bottom of the card?

A That's mine too.

JUDGE NACHMAN: Did you sign that?

THE WITNESS: Yes.

Q (by Mr. Ladov) Is all the handwriting on this card yours?

A No.

Q Which isn't?

A By the boks of it, I don't think this, this, this and this.

Q You will have to explain.

A Okay. This top signature here, the Florsheim Shoe Shop and this bottom.

JUDGE NACHMAN: I can't hear the witness.

Q (by Mr. Ladov) Explain exactly which it is?

A This signature here at the top,

JUDGE NACHMAN: The signature that appears about midway over the card, that is in your handwriting?

THE WITNESS: That is in my handwriting.

JUDGE NACHMAN: How about the words "The Florsheim Shoe Shop"?

THE WITNESS: On the bottom part?

JUDGE NACHMAN: Yes.

THE WITNESS: Yes, that's mine, and the date on the bottom part and my signature at the bottom of the card.

JUDGE NACHMAN: How about the date right opposite the signature at the top part?

THE WITNESS: No, that's not mine.

JUDGE NACHMAN: How about the material above that, is any of that your handwriting?

THE WITNESS: It's a Social Security number.

JUDGE NACHMAN: That is yours?

THE WITNESS: Yes.

JUDGE NACHMAN: How about the name and address that is printed up there, is that your handwriting?

THE WITNESS: No, it's not mine.

Q (by Mr. Ladov) I'm still not clear. Where it says applicant's signature on the top half of the card, is that your handwriting?

A That's mine.

Q Did you execute that?

A I signed that yes.

Q Did you have any explanation Mr. Sarver, why the dates are different on the card?

A I don't know why.

Q Did you see this card --

A I signed them at the same time. I might have putthe wrong date down when I signed it, but I signed it at the same time.

Q On the top of the card where it says last name, and underneath that is printed Sarver, is that your writing?

A No, that's not mine.

Q Where it says first name, Michael?

A That's not mine.

Q Would you go over again -- the signature that says applicant's signature, that is your writing?

A That is my writing there yes.

Q Do you recall executing that?

A Yes.

MR. LADOV: No more questions.

RECROSS EXAMINATION

Q (by Mr. Dicker) Let me ask you again Mr. Sarver, the signature next to the x?

A That's mine.

Q That's your signature?

A Yes.

Q The signature on the bottom is also your signature?

A Yes.

Q Signed at the same time?

A Yes.

Q Same pen?

A Yes.

Q You're sure of that?

A Positive.

MR. DICKER: I have no further questions.

MR. LADOV: Nothing.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. LADOV: I call Mr. Joseph Osselburn please.

Whereupon,

JOSEPH OSSELBURN

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

MR. DICKER: Your Honor, I would request you ask the witness whether or not he was in the room during testimony of the first two witnesses this morning.

JUDGE NACHMAN: Were you in the Courtroom when Mr. Foreman and Mr. Paranzino testified?

THE WITNESS: I was in briefly when the second witness was on, just a matter of a minute.

JUDGE NACHMAN: How long?

THE WITNESS: Approximately, anywhere from two to three minutes because Counsel then made a motion to clear --

JUDGE NACHMAN: He asked you to leave the room?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Again I am going to restrict the examination of this witness and General Counsel to any questions you may have concerning the signing of a car ,
any questions you may have concerning conversations with management to which Mr. Paranzino was not a part.

MR. LADOV: Yes Your Honor.

DIRECT EXAMINATION

Q (by Mr. Ladov) State your name and address?

A Joseph Osselburn, 200 Franklin Avenue, Pittsburgh, Pennsylvania.

Q By whom are you employed?

A Florsheim Shoe Company of Monroeville Mall.

Q How long have you been employed?

A I have been employed there since March of 1972.

Q You are presently employed there?

A Yes sir.

Q Who is your immediate supervisor?

A Ronald J. Moran.

Q What is your capacity?

A Salesman sir.

Q Full time or part time?

A Full time sir.

JUDGE NACHMAN: Where did you say you worked?

THE WITNESS: Monroeville Mall sir.

Q (by Mr. Ladov) Mr. Osselburn, were you ever involved in the employees attempt to organize a union at Florsheim?

A Yes sir.

Q Would you describe to the Judge your involvement please?

A In March of 1975, Robert Belesky, George Macko and myself met with Mr. Gary Best at Schraft's Lounge in

Monroeville Mall. At that time he spoke with Gary, he presented the union and showed us the benefits, and also at that time we signed cards at that meeting.

JUDGE NACHMAN: Each of you?

THE WITNESS: Yes sir.

JUDGE NACHMAN: You saw the others sign?

THE WITNESS: Yes sir, we were sitting together.

Q (by Mr. Ladov) After the meeting then what occurre after -- regarding the union?

A After the meeting,as per Gary's instruction,we went back to talk to our fellow workers and then signed out store in total.

Q Did you ever speak with -- strike that.

Did Mr. Moran ever ask you about, anything about the union?

A Yes sir.

Q When?

A On September 2nd, Mr. Moran came over to me and asked me what was going on. I assumed at that time that he meant the fact that --

MR. DICKER: Objection.

JUDGE NACHMAN: Don't tell us what you assumed, just tell us what he said to you and what you said to him.

THE WITNESS: All right sir. He said to me what was going on and I told him that the majority of the people in the company had voted to have a union, and we had petitioned the company -- he then asked me why, and I of course told him about the money.

Q (by Mr. Ladov) What did you tell him about the money?

A. I told him that the raise that he had promised to get for us had never come through.

Q Did Mr. Moran say anything else during this conversation?

A. Yes sir. He felt that we should have our money. He said to me, he asked me who was involved and who started the union. I told him I had no idea. At that point, he just turned and walked away.

JUDGE NACHMAN: When did you say this conversation occurred?

THE WITNESS: September 2nd, sir.

Q (by Mr. Ladov) 1975?

A. Yes sir.

Q Where did the conversation occur?

A. In the Monroeville Mall store.

Q Was anyone else --

JUDGE NACHMAN: Who else, if anyone else was present?

THE WITNESS: Just myself and Mr. Moran at that time.

Q (by Mr. Ladov) Did you have any other conversations with Mr. Moran regarding the union Mr. Osselburn?

A. Yes sir. On September 15th, or thereabouts, Mr. Moran came over to me in the course of a conversation and said that he knew that George Macko and myself had started the effort on behalf of the union.

Q. What did you say?

A. I did not reply sir.

Q. Anything else in that conversation?

A. No sir. That was primarily what the conversation was about.

Q. Anything else that you recall during this conversation?

A. No sir.

Q. Where was it at again?

A. In the store sir.

Q. The Monroeville Mall store?

A. Yes sir.

Q. I show you what's been introduced as General Counsel's exhibit 4-A, can you identify that?

A. Yes sir. This is the card I in fact did sign on the date, which was March 26th, 1975.

Q. Mr. Best gave you that card?

A. Yes sir.

Q. Did you read the card before you signed it?

A. I did sir.

Q. The whole card?

A. Yes sir.

JUDGE NACHMAN: How about the legend opposite the x, where your signature appears?

THE WITNESS: Yes sir.

JUDGE NACHMAN: You read that portion?

THE WITNESS: Yes I did read that.

MR. LADOV: No more questions Your Honor.

MR. DICKER: May I ask whether or not the witness has given a statement or adopted any statement?

MS. KRIEGER: Yes.

MR. DICKER: May I have a few moments to read this, it's the longest one yet.

JUDGE NACHMAN: Yes.

Off the record.

(A short recess was taken.)

(Continued on next page without loss of context.)

JUDGE NACHMAN: On the record.

All right Mr. Dicker, you may cross examine.

MR. DICKER: Thank you Your Honor.

CROSS EXAMINATION

Q (by Mr. Dicker) Mr. Osselburn, between March of 1975 and September 2,of 1975, when you spoke to Mr. Moran, did you speak to anyone in the company concerning the union?

A. Anyone in the company?

Q Anyone in management?

A. Concerning the union, no sir.

Q You spoke to other employees about the union?

A. Yes sir.

Q On numerous occasions?

A. Yes sir.

Q Now on September 2, you had a conversation with Mr. Moran?

A. Yes sir.

Q I believe you said you were alone when you had that conversation, just you and Mr. Moran?

A. Yes sir.

Q He asked you what was going on?

A. Yes sir.

Q You told him that -- by the way, did you know at that time whether the petition had been filed?

A. Yes I did sir.

Q You told him that the majority of the people had voted for the union?

A The majority of the people had petitioned, had petitioned the company to have a union.

Q Petitioned the company?

A Yes.

Q Those are the words you used, and he asked you why. Is that right?

A Yes sir.

Q You gave him the reasons about the raise, etcetera?

A Yes sir.

Q He agreed that you should have more money?

A Yes sir.

Q Did he ever tell you that he felt that the union was good for you?

A Not in so many words, no sir. He did, he did say to me, it was in a conversation at that time, that he thought that we should have a union, but he knew the problems that would be involved with it. He did say he thought we should have a union.

Q He said to you that he thought you should have a union, but that --

A The problems involved would really be costly, you know costly.

Q Costly.

JUDGE NACHMAN: Costly for who?

THE WITNESS: Costly of course to us, you know.

JUDGE NACHMAN: Costly to whom?

THE WITNESS: To us, to the membership of the union.

Q (by Mr. Dicker) The problems involved would be costly to the membership of the union?

A. Yes. To the people that signed cards, yes.

Q Would it be costly to the company?

A. Well, obviously to the company.

Q Isn't that what he said?

JUDGE NACHMAN: What I am trying to find out is what did he say?

THE WITNESS: He said to me sir, he thought we should have a union. That it would help us, but it would be fought for, it would be very hardly fought -- very hardly fought for them to have a union because of the situation.

JUDGE NACHMAN: Did he use the words it would be costly?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Did he indicate for whom it would be costly?

THE WITNESS: No sir, no sir he didn't. He didn't indicate who it would be costly for.

Q (by Mr. Dicker) But he did think that the union was good for you?

A. Yes sir.

Q. It would be a hard fought battle to get the union?

A. Yes sir.

Q. That it would be a costly battle?

A. Yes sir.

Q. How long did that conversation last?

A. Approximately five, ten minutes, not that, if that long.

Q. Then the conversation on September 15, he came over to you and merely said that he knew that you and Macko had started the union?

A. The effort on behalf of the union.

Q. Did he say anything else?

A. That was the sum total of his statement at that time.

Q. Did you reply?

A. No sir I did not reply.

Q. Then he walked away?

A. He walked away, yes sir.

Q. Are you still employed by Florsheim?

A. Yes sir.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Your name and Mr. Macko's name are the only two names he mentioned?

THE WITNESS: In the union effort?

JUDGE NACHMAN: When he said that you were responsible for the union effort?

THE WITNESS: Yes sir. Those were the only two names mentioned, was mine and Mr. Macko's.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: Let the record show that I am returning Mr. Osselburn's affidavit to the Board.

MR. LADOV: Mr. Macko please.

Whereupon,

GEORGE J. MACKO

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

JUDGE NACHMAN: I will ask you to speak up good and loud please so we can all hear you.

THE WITNESS: Yes sir.

MR. DICKER: We would like to ask the Administrative Law Judge to ask the witness whether he was in the room during the testimony of the first two witnesses this morning.

JUDGE NACHMAN: Mr. Macko, were you in the --

MR. DICKER: I'm sorry. I withdraw that. Mr. Macko s a discriminatee.

MR. LADOV: Yes.

MR. DICKER: I withdraw that.

DIRECT EXAMINATION

Q (by Mr. Ladov) Would you state your name and address please?

A George J. Macko, I reside at 277 Welsh Avenue, Wilmerding, Pennsylvania.

Q Where?

A Wilmerding.

Q By whom are you presently employed?

A I'm employed by the Florsheim Company of Pittsburgh at the present time.

Q Would trace your employment history with Florsheim please?

A Yes. I was hired by Florsheim Shoe Company up in Monroeville in March of 1971. I worked out there until September the 19th of 1975. On September the 20th I was transferred to 200 Fifth Avenue in Pittsburgh.

Q While you were at the Monroeville Mall Store, what was your job?

A My job at Monroeville was as a salesman.

Q Part time, full time?

A I was a full time salesman.

Q. Are you still presently working?

A. I'm presently working at 200 Fifth Avenue as a full time salesman.

Q. Who was your supervisor or manager at Monroeville Store?

A. I was hired by Mr. Brower, who is now the manager at 501 Smithfield Street Store. When I was transferred from Monroeville I was working for Mr. Ronald Moran.

Q. Who is your manager at the Fifth Avenue Store?

A. Mr. Howard Levine.

Q. Mr. Macko, did you ever learn of the employees efforts to organize a union at the Florsheim Shoe Stores?

A. Yes sir I did.

Q. Would you describe when you learned of this?

A. Well, it started back in about February of 1975, between Joe Osselburn and myself. We decided that we felt that it was time that we had a union to represent us as a collective bargaining agent.

Q. Did you ever attend a meeting, any union meetings?

A. Yes I did.

Q. When?

A. It was on the evening of March the 26th.

Q. 1975?

A. 1975.

Q. Where was this meeting held?

A. We had a meeting at Schraft's Restaurant and Cocktail Lounge with Mr. Gary Best, representative from Local 1407.

Q Who else was present?

A. Besides myself there was Mr. Osselburn and Mr. Belesky, all three of us employed at the Monroeville Store at the time.

Q What occurred at this meeting?

A. Mr. Best had us sign application cards to show that we in fact did want to be represented by Local 1407 as a bargaining agent.

Q All right Mr. Macko, I show you what has been introduced into evidence as General Counsel's exhibit number 4-C, is that the card you signed on -- can you identify that please?

A. Yes sir. This is the card that I signed on the night of March 26th.

Q Mr. Best gave you that card?

A. Yes sir he did.

Q Is that your signature?

A. That is my signature, yes sir.

Q Did you read the whole card?

A. Yes.

Q Before you signed it?

A. Yes I did.

Q Did you read this corner, this small print?

A. Yes sir.

Q. Then what did you do?

JUDGE NACHMAN: The portion opposite your signature is what Counsel is referring to, that's what you read?

THE WITNESS: Yes.

Q. (by Mr. Ladov) The portion opposite your signature, the fine print?

A. Yes sir.

Q. Then what did you do with the card?

A. I presented the card to Mr. Best.

Q. Did you ever contact any other employees regarding the union Mr. Macko?

A. Yes I did. I contacted a gentleman at South Hills Village, Mr. Mike Kelly, I talked to him on the phone. I also talked to Mr. James Schneider, employed at 501 Smithfield Street.

Q. What was Mr. Schneider's response?

A. He was very enthusiastic. He was all in favor of the union.

Q. Mr. Kelly's response?

A. At first Mr. Kelly was in favor of the union, and later on got a change of feeling.

Q. Did he tell you of this? How did you know he had a change of feeling?

A. In my second conversation with him he said he had no desire.

Q Mr. Macko, did you ever discuss the orgnizational campaign with any managers?

A. Yes sir I did. It was in late May, early June, Mr. Rosenberry, who is the manager of our South Hills Village Store, stopped out Monroeville one evening. We took a walk through the mall and we were talking, and I was expressing some displeasure with the way that things were going. He says that he thought it might be a good idea if the salesman were represented by a union.

Q Did you make any response?

A. Well, I informed at this time, since he brought up the subject, that we in fact did have the ball rolling. We were trying to form a union and that I had in fact already signed a membership card.

Q Did you have any other discussions with any supervisors of management regarding the union?

A. Before or after the petition?

Q Did you have any discussions prior to the petition being filed?

A. That was the only discussion I had.

Q Then after the petition was filed?

A. After the petition was filed I had one discussion with Mr. Moran.

Q Where did that discussion occur?

A. That took place in the store out at Monroeville. He said that he understood that Joe Osselburn and myself had started this ball rolling, to try and form a union. He told me that we had stirred up a beehive.

Q When did this conversation occur?

A That was in the early part of September.

Q Where did it occur?

A It occurred in the store at Monroeville Mall.

Q Did you have any other discussions regardingthe union with any managers?

A Yes sir. One other. That was on the night of September the 20th, which was my first day on the job down at 200 Market Street. It was after work and I was with Mr. Brower, the manager of 501 Smithfield Street, and he asked me why we had gone about trying to form a union. Why didn't we just get together and come down and see Mr. Levine and let him know if we had any grievances. So I told him that I felt if we was to do something like that that the company would in fact know what we had on our minds, and perhaps within a matter of weeks or so that we would find ourselves out of a job. Mr. Brower said that well, we just went about it the wrong way. He said that what we should have done was see Mr. Levine. He reiterated on that a couple of times. He said if that didn't work we should have talked to Mr. Ted Silverhorne. Then later on he told me to drop the whole idea of a union. He said in fact there is no way that you can win.

Q What do you mean later on?

A Later on in the conversation.

Q Where did this conversation occur?

A We was in Mr. Brower's car, we were heading out to Monroeville Mall.

Q What day was this?

JUDGE NACHMAN: This was on September 20th.

THE WITNESS: Yes sir it was, September 20th.

Q (by Mr. Ladov) When were you transferred from the Monroeville Store?

A I started work at 200 Fifth Avenue on September the 20th, 1975.

Q All right Mr. Macko, could you relate the circumstances surrounding your transfer from the Monroeville Store of the Fifth Avenue Store?

A Yes sir.

Q Please.

A On Wednesday, September the 17th, I received a phonecall from Paul Holmes and he asked me to --

JUDGE NACHMAN: Did you say September 17th?

THE WITNESS: September 17th.

Q (by Mr. Ladov) Of 1975?

A 1975, he asked me to come down to the 501 Smithfield Street Store, he wanted to meet me and have a discussion with me. I got down there as soon as I possibly could, and we went down into the conference room. He told me that, starting as of Friday, September 19th, that I would be employed at 200 Fifth Avenue Street Store, He said that this was a promotion, and that I would be working downtown. I would have an opportunity to make more money down there. That I would be working directly with the District Manager, therefore I would have an opportunity to learn the job much better, it would increase my chances of promotion.

I asked Mr. HOlmes at the time if I had a choice in the matter, he told me that I certainly did. He couldn't understand why I asked him a question such as that, and I told him that because he had put everything so matter of factly to me that I just felt that I had no choice in the matter. So he said to think it over, let him know my decision the next morning.

Q Did anything else happen in that conversation?

A Well, he told me that I was the number one Assistant Manager in the city, and that that was the reason they were asking me to come downtown. I told him that I felt that I wasn't the number one Assistant, mainly because Mike Kelly, at South Hills, had more seniority that I did, and had been an Assistant Manager at South Hills Village longer than I had been at Monroeville.

He told me that he had in fact talked to Mr. Kelly, he knew Mr. Kelly's position, he knew where he stood, therefore I was the number one Assistant Manager.

Q What then occurred Mr. Macko?

A Well, the following morning I called Paul Holmes in town, and I told him that I had thought it over and I just didn't see where the transfer was beneficial to me, and I told him that I could not accept the transfer. He told me that he was sorry I felt that way for turning down the opportunity. He said that he would re-evaluate all the facts, that somebody had to be in that store by the end of the week, and he said that he hoped he could honor my request.

Q Did you at this time tell him why?

A Not at this time, no. Because I thought that he would honor my request.

Q When then occurred Mr. Macko?

A On September the 19th, on Friday, Mr. Holmes came out to the Monroeville Mall Store, that morning we were informed by Mr. Moran that all employees were going to a forty-eight hour week and that all our part timers were going to be terminated if they couldn't work forty-eight hours.

JUDGE NACHMAN: Now what day is that?

THE WITNESS: That was on Friday, September the 19th.

Q (by Mr. Ladov) Continue, anything else?

A When Mr. Holmes came out to the store, he met with

Mr. Moran, they left the store and they walked around the Mall for approximately twenty minutes or half an hour or so, whenever they came back he told me rightaway he said I would like to talk to you. We left the store, we went outside of the Mall, and he told me that there was just no way that I could stay in Monroeville, he said that as of that point in time I was already on the payroll at the 200 Fifth Avenue Store and I would start working down there the following day.

I told Mr. Holmes that I thought that this action was being taken because of my activities in the union. He said that in fact that had nothing really to do with it. He said that he was in town to put the right people in the right job, and he said that if I thought that he could not move anybody anywhere, anytime he wanted to, that I was wrong and that I should check with the people who represent me.

Q Anything else during this conversation?

A Yes. I expressed a desire not to be transferred downtown because of some personal reasons.

Q Did you explain the personal reasons to him?

A Yes I did.

Q What did you tell him?

A I told him that my father, who is seventy-two years old at the time, had a respiratory illment and besides that my father is an alcoholic. Now my wife and I live with my father and when I'm away at work sometimes my wife is in fear of what might happen while I'm gone. And by being in Monroeville, I was just a matter of maximum ten minutes away from home in case of an emergency ever arose.

Mr. Holmes told me that he sympathized with my problems. He said he knows what it's like, in fact because his father was also an alcoholic. He said that if an emergency ever arose that I was authorized to leave the store in Pittsburgh to go homein case of an emergency, anytime one arose and that he would authorize me to go home by cab ontime.

Q What did you respond?

A I can't remember if I responded anything. I was just, just shocked that he would say a thing like that.

Q Mr. Macko, how long did it take you usually, normally, to get from your home in Monroeville to the Monroeville Store?

A Like I said, a maximum of ten minutes.

Q How did you get there?

A I always had a ride back and forth.

Q To get from your Monroeville home to downtown?

A To get from my Wilmerding home.

Q Wilmerding, excuse me.

A It takes me anywhere from fifty minutes to an hour and five minutes.

Q. How do you get to work?

A. Public transportation.

Q. Don't you drive?

A. I can not drive at all.

Q. Do you have a license?

A. No sir.

Q. Did you inform Mr. Holmes of these things at anytime?

A. I told him that it would be an inconvenience because of the public transportation, because I did not drive.

Q. You are now at the Fifth Avenue Store?

A. Yes sir.

Q. How many hours a week do you work?

A. I'm presently working six days, forty-eight hours a week.

Q How many hours a week did you work when you were at the Monroeville Store?

A. Five days, forty hours a week.

JUDGE NACHMAN: Is there any change in pay effected with your transfer?

THE WITNESS: Well, Mr. Holmes told me at the time that he would in fact raise my base pay from Monroeville Mall which was fifty-five dollars a week to sixty-five dollars a week downtown. I told him that on top of my fifty-five dollar base pay in Monroeville that I was also being paid an additional ten dollars a week in bonuses. It was authorized by Mr.

Silverhorne when he had been in town, approximately a year earlier, which in essence was the same as the sixty-five dollar base money.

JUDGE NACHMAN: So your base pay at Monroeville and at 200 Fifth Avenue is the same?

THE WITNESS: Yes sir it is.

MR. LADOV: I have no more questions of this witness at this time Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: May I ask whether the witness has given the Board any statements?

MS. KRIEGER: Yes.

MR. DICKER: May I have a fewminutes to read this?

JUDGE NACHMAN: I don't know what good it would be if you didn't take time to read it.

We will be in recess for about ten minutes while you are reading that. Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

You may cross examine Mr. Dicker.

MR. DICKER: Thank you.

CROSS EXAMINATION

Q (by Mr. Dicker) Mr. Macko, you indicated you signed a card on March 26th, 1975?

A Yes sir I did.

Q. You signed it in a -- what was it? The Schraft's Lounge?

A. Yes.

Q. What kind of a place is that?

A. It's a restaurant and cocktail lounge.

Q. Where were you, in the restaurant portion or the cocktail lounge?

A. I was in the cocktail lounge.

Q. What is the lighting in that room?

A. The lighting in the room was like a lounge lighting.

Q. Dim?

A. Dim.

Q. Your testimony is that you read the small print on the left hand side?

A. Yes sir I did.

Q. Now Mr. Macko, you said that you had a conversation with Mr. Rosenberry either late May or early June?

A. Yes sir that's correct.

Q. You were walking around the Mall with him?

A. Yes sir.

Q. Sort of socializing?

A. Yes sir.

Q. He told you that he felt that the union would be a good idea, if the salesmen were in the union?

A. Yes he did.

Q You told him that you had the ball rolling?

A. Yes.

Q What did he say to that?

A. He expressed a little bit of surprise, and he said that he felt that if by having a union made the employees that much more happier, would make him do a better job, that he thought that it was in fact a good idea.

Q Now your conversation with Mr. Moran was after the petition was filed?

A. Yes sir.

Q That was when? It would be the first couple of days of September?

A. Yes, approximately a week, week and a half.

Q After the petition was filed?

A. After the petition was filed.

Q So it would be during the first week of September?

A. Yes.

Q He said that he told he understood that you and Osselburn had started the union?

A. That we had started the movement, yes sir.

Q What did you say to that?

A. Did not deny it, I said yes we did.

Q You didn't deny it?

A. Yes.

Q Did you say yes or were you silent?

A. Pardon me?

Q. Did you say yes we did, or were you silent?

A. We let him know the fact that we did start it, we said yes.

Q. Who is we?

A. Myself and Joe Osselburn.

Q. Both of you were there?

A. No. No, I was there.

Q. You were there?

A. I was there. I said yes that we'd both had a hand in it.

Q. I see. You said yes to Mr. Moran you both started it?

A. Yes.

Q. What did Mr. Moran then do, threaten you with discharge?

A. No sir he didn't.

Q. What did he do?

A. All he said was that we stirred up a beehive.

Q. Then what?

A. That was it.

Q. That was the end of the conversation?

A. Yes.

Q. Now you said you had a conversation with Mr. Brower about September 20th?

A. Yes it was on September 20th.

Q Where was this conversation?

A This was after work, we were in his car, he was driving me from work out to the Monroeville Mall.

Q He asked you -- well, tell us about that conversation?

A He asked me why we wanted a union, if we had any complaints why we did not just get together as a group and confront Mr. Levine and let him know what our grievances were and that he would take care of it, and that if he couldn't do anything for us, he said that we should have contacted Mr. Ted Silverhorne, and then perhaps he could have done something for us. He said that we went about it the wrong way, and he said that what we should do is just give up the whole idea, we had no chance of winning, and he told me to not follow Joe Osselburn's lead.

Q Anything else during that conversation?

A No. That was the extent of it.

Q That was after you had been transferred?

A Ye s sir.

JUDGE NACHMAN: As a matter of fact September 20th was your first day at duty at 200 Fifth Avenue?

THE WITNESS: Yes sir it was.

Q (by Mr. Dicker) Mr. Drower was driving you back to --

A We were going out to the Monroeville Mall.

Q The purpose was you picking up a lift home?

A Yes.

Q How did you happen to be in Mr. Brower's car?

A Well, because he was going out to the Monroeville Mall, he had shoes I believe that he had to take out there for an exchange for customers out there. In fact you know he knew that having worked with him for a couple of years that I lived out that way, so we drove to Monroeville Mall together.

Q You had worked for Mr. Brower for a couple of years?

A Yes sir I did.

Q After you were -- when, Mr. Brower was out at Monroeville Mall at the time you worked with him?

A Yes.

Q Then Mr. Brower got transferred to 501 Smithfield?

A Yes sir he did.

Q That's downtown Pittsburgh?

A Yes.

Q Did Mr. Brower contact you after his transfer to downtown Pittsburgh about your coming to work for him?

A On a few occasions, yes sir he did.

Q How many occasions?

A I don't know right off hand. I would have to say four to half a dozen times.

Q What did he say?

A He wanted to know if I would come downtown and work for him. He said that if I would he would dismiss Mr.

Bakowski and would put me on his payroll as of the next day or as soon as possible.

Q Now you first saw Mr. Holmes on September 17th?

A Yes sir.

Q Did Mr. Holmes tell you why he was in Pittsburgh?

A Yes. He said at the time that he was here to put the right people in the right jobs. He wanted to put full time people in all stores.

Q He told you on September 17th he wanted full time people in all the stores?

A Yes sir he did.

Q Did he tell you why?

A Yes. He said that a week, approximately two weeks prior to his visit in town that Mr. Brien was in town and that he was very disappointed that every time he went to a store that all he was running into was part time people.

Q Did he tell you why Mr. Brien was disappointed?

A Not really, no.

Q During that conversation -- strike that.

Now, you thought over after the conversation on the 17th with Mr. Holmes, and the reasons that Mr. Holmes gave you why he wanted to transfer you and he said you think it over?

A Yes sir.

Q You were to call him the next day?

A Yes.

Q And you did call him the next day?

A I certainly did.

Q Where did you call him?

A I called him at the 501 Smithfield Street Store.

Q You told him that you had made up your mind, you didn't want to be transferred?

A Yes sir.

Q Did you at that time tell him about your personal problems?

A No, not that time. I did not want to express them unless I really had to.

Q But you didn't?

A No sir I didn't.

Q What did Mr. Holmes say?

A He said that he was sorry that I was turning down the opportunity. He said that he wished I would have taken it. He said he would re-evaluate all of the facts, that somebody had to be down that store by the end of the week. He hoped that he could honor my request.

Q He hoped he could honor your request?

A Yes.

Q Then on September 19th, the following day, who told you that you had to go down to the Monroeville Store?

A Pardon me.

Q. Who told you that you had to go down to the downtown store?

A. Paul Holmes.

Q. Paul Holmes, he called you or saw you in person?

A. He saw me in person.

Q. When you spoke to Mr. Holmes, did there come a time when you spoke to Mr. Holmes, when you said that it was because of your union activities that he wanted you to be moved to downtown store?

A. Yes I mentioned that.

Q. Was that on the 19th?

A. That was on the 19th.

Q. What did he say to you?

A. He said that it didn't enterinto the picture.

Q. That it never entered the picture?

A. Right.

Q. What did he, else did he say?

A. Well, he said that he was in town, contrary to what I may think he was in town, for one reason and one reason only, was to put the right people in the right place, and he thought that I was the right man for the job at 200 Fifth Avenue.

MR. DICKER: No further questions.

JUDGE NACHMAN: Any redirect?

MR. LADOV: No Your Honor.

JUDGE NACHMAN: The witness is excused.

(Witness excused.)

MR. DICKER: Let the record show that I am returning the affidavit of Mr. Macko to the Board.

JUDGE NACHMAN: Call your next witness please.

MR. DICKER: Your Honor, may we go off the record for a moment.

JUDGE NACHMAN: Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

MR. LADOV: Your Honor, at this time I would like to propose the following stipulation.

That if Kurt Federschmidt was to testify, he would testify that he first started work in Pittsburgh, Pennsylvania on September 16th, 1975. And that he first learned of this transfer from Philadelphia, Pennsylvania store to the Pittsburgh stores around September 9th, 1975.

I further, that if Mr. Kenneth Sennigton would testify, he would testify that he began work in Pittsburgh, Pennsylvania on September 18th, 1975, and that he was first notified of this transfer from Philadelphia, Pennsylvania to Pittsburgh, Pennsylvania on September 17th, 1975.

That if Daryl Christensen would testify, he would testify that he first began working in Pittsburgh, Pennsylvania on September 18th, 1975, and that he would testify he first learned of this transfer around September 10th, 1975.

JUDGE NACHMAN: Where was he transferred from?

MR. LADOV: That transfer was from Erie, Pennsylvania to Pittsburgh, Pennsylvania.

JUDGE NACHMAN: When you talk about from Philadelphia and Erie,you are talking about Company-Respondent owned stores in those cities?

MR. LADOV: Yes, I'll get to that, right.

That Raymond Wolfe, who was employed by Florsheim in Philadelphia, Pennsylvania, was transferred and began working in Pittsburgh, Pennsylvania on September 13th, 1975. That he first learned of this transfer on or about September 10th, 1975.

Further, that Mr. Wolfe would also testify that he was transferred from Philadelphia, Pennsylvania to Pittsburgh. Further Mr. Wolfe would testify that a Mr. Steven L. Gaines, who was working in the same store with Mr. Wolfe in Philadelphia, Pennsylvania was transferred and began working in Pittsburgh, Pennsylvania on September 18th, 1975, and that Mr. Gaines first learned of this transfer on or about September 10th, 1975.

Further -- let's stop right there.

Further, we'd like to stipulate that employee Michael Watson, was transferred from -- Mr. Michael Watson was transferred from Florsheim store in the New York area and began working in Pittsburgh, Pennsylvania on September 18th, 1975, and first learned of this transfer sometime in early September 1975.

That employee Harold Frederick was transferred from Chicago, from Florsheim store to a Florsheim store in Pittsburgh, Pennsylvania and began working on September 18th, 1975.

I propose that following -- that prior stipulation.

JUDGE NACHMAN: Any stipulation with respect to Mr. Federschmidt. I haven't heard that.

MR. DICKER: It was the first one Your Honor.

MR.LADOV: That he was transferred from Philadelphia, Pennsylvania to Pittsburgh, Pennsylvania and began working in Pittsburgh on September 16th, 1975, and that he first learned of this transfer on or about September 9th, 1975.

JUDGE NACHMAN: Does that complete your stipulation, proposed stipulation?

MR. LADOV: Regarding these employees, yes.

MR. DICKER: We stipulate to those employees. That if those employees would be called that they would so testify.

MR. LADOV: Further I'd like at this time --

JUDGE NACHMAN: All right, the stipulation is approved.

Now, is there a further stipulation?

MR. LADOV: I would further propose to stipulate that if Mr. Christensen would testify, he would testify that as of September 1st, 1975, in the Erie store, there were two full time employees and one part time employee employed, in addition to the manager, and that presently he is the manager of the Erie Florsheim Store, and that there are two full time employees and one part time employee employed.

JUDGE NACHMAN: In addition to himself?

MR. LADOV: In addition to himself.

MR. DICKER: We would so stipulate Your Honor.

MR. LADOV: Can we stipulate that there are presently --

MR. DICKER: No.

JUDGE NACHMAN: Just a minute. Let's go off the record.

Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

During the off the record discussion,question arose as to proport a number of stores in Philadelphia, that have hired full time employees and a number that have some part time employees, and those that have part time employees on the proportion is -- Respondent's Counsel has agreed that during the recess of this case and the time that the record will be open, the partiss will -- or he will ascertain tha facts, incorporate them into a written stipulation for filing with the record before the record is closed.

MR. DICKER: Yes Your Honor.

JUDGE NACHMAN: Is that satisfactory?

MR. DICKER: Yes Your Honor.

JUDGE NACHMAN: All right, so stipulated.

MR. LADOV: So stipulated.

I have but one witness left Your Honor.

JUDGE NACHMAN: Just one witness left?

MR. LADOV: Very short.

JUDGE NACHMAN: All right.

MR. LADOV: I call Mr. Hickey.

Whereupon,

PATRICK HICKEY

was called as a witness by and on behalf of the General Counsel and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Ladov) Would you state your name and address please?

A Patrick Hickey, 115 Daniel Drive, that's Pittsburgh 15209.

JUDGE NACHMAN: Mr. Hickey, could you speak up just a little bit louder please?

THE WITNESS: Yes.

Q (by Mr. Ladov) Mr. Hickey, by whom are you presently employed?

A. Florsheim at the Northway Mall.

MR. LADOV: At this time Your Honor, does Counsel have any objection to the using of this calendar of February 1976?

MR. DICKER: If it is an accurate one.

JUDGE NACHMAN: I will take official notice of the calendar.

Q (by Mr. Ladov) Mr. Hickey, when did you first begin working for Florsheim?

A. February 17th, 1976.

Q. Where do you work?

A. Florsheim Shoe Shop at the Northway Mall.

Q. When did you first apply for the job Mr. Hickey?

A. February 16th, 1976.

Q. Would you describe the process you went through to apply for this job?

A. Well, I stopped in at the Florsheim Shop on -- Mr. Levine's shop, at 200 Fifth Avenue, is that right?

Q. Yes.

A. I told him that I was looking for work and filled out an application, and that's about it. It was very --

Q. When was that Mr. Hickey?

A. That was sometime in the afternoon of the 16th of February.

Q. You began working the next day?

A. That's right.

Q. How did you learn that you were going to begin working the next day?

A. Well, I got a call from Jim Holleran the evening of February the 16th. He told me that they had an immediate opening and they needed somebody right away.

Q. Mr. Hickey, have you had any previous experience with Florsheim Shoes?

A. No sir.

JUDGE NACHMAN: Have you had any previous experience in shoe selling?

THE WITNESS: No sir.

Q. (by Mr. Ladov) Who is your supervisor at the Northway Mall?

A. Jim Holleran.

Q. Mr. Hickey, has Mr. Holleran ever asked you about a union?

A. Yes sir.

Q. When?

A. It was either Wednesday or Thursday, the 25th or the 26th of February 1976.

Q. Would you describe that conversation please?

A Well, he told me that he had a phonecall from Mr. Levine, and Mr. Levine was concerned as to what my attitudes were concerning the union.

Q Did you respond?

A I responded that I felt I hadn't had enough information one way or another, so I felt noncommitted either way, neutral.

Q Did Mr. Holleran make any response?

A Well, he just, he stated that if you decided to go pro union to talk to Mr. Gregg Koritsky, and that he'd get me protected.

JUDGE NACHMAN: He'd get you what?

THE WITNESS: Protected.

Q (by Mr. Ladov) Did he make any other responses?

A Not that I could recall.

Q Did you have any other discussions with any managers of Florsheim regarding the union?

A I had. Mr. Levine talked to me Saturday, I guess it was February the 28th, and he just asked me if my attitudes concerning a union had changed.

Q What did you respond?

A I said I guess not.

Q Where did this conversation occur?

A In the stock room at the mall.

Q You'd been working less than a month for Florsheim

Shoes?

A. Yes sir.

JUDGE NACHMAN: Did Mr. Holleran indicate what he meant by get you protected? Did he say?

THE WITNESS: That's his -- that's the phrase he used.

JUDGE NACHMAN: Those are the words he used.

THE WITNESS: That's the phrase he used.

JUDGE NACHMAN: Did he amplify on that in anyway? Explain what that meant?

THE WITNESS: Well, I suppose he --

JUDGE NACHMAN: Don't tell us what you supposed he meant. Did he say what he meant?

THE WITNESS: No sir, he didn't.

JUDGE NACHMAN: All right.

MR. LADOV: No further questions Your Honor.

JUDGE NACHMAN: You may cross examine.

MR. DICKER: Is there a statement or affidavit by this witness?

MR. LADOV: Let the record show that I am turning over to Mr. Dicker notes which I made.

JUDGE NACHMAN: As a result of your interview with the witness?

MR. LADOV: As a result of my interview with the witness.

These notes I made on March, I think March 1st, or was March 1st, 1976, and that the witness during the interview saw these notes and read over them.

CROSS EXAMINATION

Q (by Mr. Dicker) Mr. Hickey, you were employed full time at the 200 Fifth Avenue store?

A. Pardon me?

Q I'm sorry. You are working at --

A. The Northway Mall store.

Q Northway Mall, are you employed full time at Northway Mall sir?

A. Yes sir.

Q How many hours do you work?

A. Forty-eight hours a week.

Q You walked in off the street cold at 200 Fifth Avenue on the 16th of February?

A. Yes sir.

Q No ads in the newspaper or anything?

A. No sir.

Q You spoke to Mr. Levine?

A. Yes sir.

Q Asked whether there was an opening?

A. Yes sir.

Q You went to work the very next day, the 17th?

A. Yes sir.

Q Mr. Levine called you at home?

A No. Mr. Holleran called me.

Q Mr. Holleran called you and told you to come down?

A Yes sir.

JUDGE NACHMAN: Told you to come to the Northway Mall?

THE WITNESS: Yes sir.

Q (by Mr. Dicker) [illegible]ou began working on the 17th of February?

A Yes sir.

Q About eight or nine days later Mr. Holleran spoke to you about the union?

A Yes sir.

Q He said he had a call from Mr. Levine?

A Yes sir.

Q He wanted to know what your attitude was about the union?

A Yes.

Q You said to him that you hadn't made up your mind?

A Yes sir.

Q Anything else said about the union in that conversation? Other than the remark about do you want protection see Mr. Koritsky. Did he say Koritsky or Gregg?

A Gregg Koritsky.

Q Gregg Koritsky, he had said both?

A. Yes sir.

Q. Anything else said about the union at that time?

A. He tried to make it clear to me that he wasn't trying to put me in a position of --

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: Don't tell us what he tried to make, tell us what he said.

THE WITNESS: Oh, no. No sir he didn't.

I can't recall any other discussion.

Q. (by Mr. Dicker) Did he tell you why he was asking you about this?

A. Well, all he told me was that he had a call from Mr. Levine, and Mr. Levine was interested to know what my attitude was.

Q. Did he tell you whether this would effect your job or not, your answer?

A. No he didn't, he didn't threaten me.

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: The answer will stand.

MR. DICKER: Your Honor --

JUDGE NACHMAN: The answer will stand insofar that he made no statement as to an effect on his job.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Off the record.

(Discussion off the record.)

EVENING SESSION

6:00 p.m.

JUDGE NACHMAN: On the record.

Any redirect?

MR. LADOV: No questions Your Honor.

JUDGE NACHMAN: You're excused sir.

(Witness excused.)

JUDGE NACHMAN: Do Counsel have any further witnesses?

MR. LADOV: Could I have a minute or two Your Honor?

JUDGE NACHMAN: All right. Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

MR. LADOV: At this time Your Honor, General Counsel rests.

JUDGE NACHMAN: Due to the necessity of Respondent's Counsel's leave for the United States District Court in New York tomorrow, it's impossible to proceed further with this hearing at this time.

We will have to adjourn over to an agreeable date.

Now, what do you people find is an agreeable date?

MR. DICKER: Your Honor, as I must tell you -- may we go off the record?

JUDGE NACHMAN: Yes. Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

Accordingly, I am adjourning this hearing until 11:00 o'clock in the morning of March 23rd, and we will continue from that point until we have concluded.

Mr. Dicker, you indicated to me at the beginning of this trial that there was some possibility that you might conclude and not put on any testimony at all. You indicated to me a few moments ago that you have not reached a conclusion on that.

I say to you that if between now and the time we fixed for the adjournment, you reach a definite decision not to put on any evidence, you can always enter into a stipulation, we will close the record, and I will fix time for briefs.

MR. LADOV: Your Honor, if I may?

JUDGE NACHMAN: All right.

MR. LADOV: I have one last question regarding exhibits. I'm sure Mr. Dicker and I would like to make copies of exhibits as you requested earlier in the hearing. Our machine right now is closed. Can we do this tomorrow?

JUDGE NACHMAN: Any party may withdraw from the Reporter at this time any exhibit offered by that party for the purpose of making duplicates or necessary copies.

The only conditions are that the copies furnished must be clear and legibile, and there the condition is that any exhibit borrowed, must be returned to the Reporter within five days from this date. Other than that it's a matter of mechanics between you and the Reporter.

Now, that concludes -- there is something I want to say to you gentlemen after we go off the record, and I want to say this to you in view of the discussion we've had.

That closes the record.

(Whereupon, at 6:19 p.m. the hearing was adjourned, to reconvene at 11:00 a.m., Tuesday, March 23, 1976, in the same place.)

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